TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 585

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, ET AL., PETITIONERS,

vs.

AMERICAN BOND & MORTGAGE COMPANY.

No. 586

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, ET AL., PETITIONERS,

vs.

AMERICAN BOND & MORTGAGE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 31, 1932

CERTIORARI GRANTED FEBRUARY 20, 1933

(37,282 37,283)

(37,282, 37,283)

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[fols. a & 1 & 2] [Caption omitted]

[fol. 3]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Bankruptcy. #48011

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Corporation

PETITION—Filed Sept. 5, 1931

To the Honorable Judges of said Court:

The petition of American Bond and Mortgage Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, with its general offices and principal place of business in the City of Chicago, in the County of Cook, District and State aforesaid, engaged in the business of buying and selling real estate, bonds and mortgages, respectfully represents:

That it has had its principal place of business for the greater portion of six months next immediately preceding the filing of this petition at Chicago, within said judicial district; that it owes debts which it is unable to pay in full; that it is willing to surrender all of its property for the benefit of its creditors and is willing to be adjudged a bankrupt on that ground, and desires to obtain the benefit of the Acts of Congress relating to bankruptcy, and that it will file true and correct schedules of all of its debts and property and the names and places of residence of its creditors and such further statements concerning said debts as are required by the provisions of said Acts, within ten days from the present date.

[fol. 4] Wherefore your petitioner prays that it may be adjudged by the Court to be a bankrupt within the purview of said Acts.

American Bond and Mortgage Company, a Corporation, by Arthur W. Draper, President. A. L. Schapiro, H. E. Ambler, Attorneys for Petitioner.

Attest:

M. R. Walsh, Assistant Secretary.

Duly sworn to by Arthur W. Draper. Jurat omitted in printing.

[fols. 5 & 6] EXHIBIT A TO PETITION

I, H. E. Ambler, hereby certify that I am the duly elected, qualified and acting Secretary of American Bond and Mortgage Company; that as such officer I have in my possession and I am the keeper of the minutes of the meetings of the Board of Directors of said corporation and its corporate seal, and am authorized to make this certificate; that the following is a true copy from said minutes of a resolution adopted by the Board of Directors of said corporation, at a meeting thereof called and held as required by law and its by-laws on September 3, 1930, at which meeting all directors were present:

"Whereas, the directors of this corporation, after careful consideration of the affairs of this corporation, have reluctantly concluded that this corporation is now unable to pay its debts, and that in view of business conditions now existing there no longer remains opportunity to work out the affairs of this Company, and that therefore its affairs ought to be wound up;

"Now, therefore, be it resolved, that this corporation hereby admits its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground;

"Resolved further, that Arthur W. Draper, the President, and M. R. Walsh, the Assistant Secretary, of this corporation, be and each of them is hereby authorized, empowered, and directed for and on behalf of this corporation to prepare and file the corporation's petition in the District Court of the United States for the Eastern Divi-

sion of the Northern District of Illinois, within which said judicial district this corporation has had its principal place of business during the greater portion of the preceding six months, for the purpose of having this corporation adjudged a bankrupt, and that such proceedings be had thereon as are provided by an Act of Congress entitled, "An Act to establish a Uniform System of Bankruptcy for the United States", approved July 1, 1898, and the Acts amendatory thereof; and the said Arthur W. Draper, President and M. R. Walsh, Assistant Secretary, be and each of them is hereby authorized for and on behalf of this corporation to employ counsel and do any and all things and to take any and all action which they may deem necessary, advisable, or appropriate with reference to said proceedings or the subject matter of this resolution."

I further certify that said resolution is now in full force and effect and has not been revoked or amended.

Witness my hand as Secretary of the American Bond and Mortgage Company and its corporate seal this 3rd day of September, A. D. 1931.

H. E. Ambler, Secretary. (Seal.)

[fols. 7 & 8] In United States District Court for the Northern District of Illinois

Present: The Honorable James H. Wilkerson, Judge.

In Bankruptcy. 48011

In the Matter of American Bond and Mortgage Company, a Corporation

Order of Adjudication—Sept. 5, 1931

At Chicago, in said District, on the 5th day of September, A. D. 1931, before the Honorable James H. Wilkerson, Judge of said Court, in Bankruptcy, the petition of American Bond and Mortgage Co. that it be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to Bankruptcy having been heard and duly considered, the said American Bond and Mortgage Co. is hereby declared and adjudged bankrupt accordingly.

[fols. 9 & 10] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION, NORTHERN DISTRICT, OF ILLINOIS

In Bankruptcy. No. 48011

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Corporation

ORDER REFERRING MATTTER TO REFEREE—Sept. 5, 1931

Whereas, American Bond and Mortgage Company, a corporation, of Chicago, Illinois, in the County of Cook and District aforesaid, on the 5th day of September, A. D. 1931, was duly adjudged a bankrupt upon a petition filed in this Court by or against him on the 5th day of September, A. D. 1931, according to the provisions of the Acts of Congress relating to bankruptcy:

It is therefore ordered that said matter be referred to Garfield Charles, one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said American Bond and Mortgage Company, a corporation, shall attend before said Referee on the 5th day of September, at Chicago, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said voluntary bankruptcy.

[fols. 11 & 12] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

ENTRY OF MOTION FOR APPOINTMENT OF RECEIVER—Sept. 5, 1931

This day comes the bankrupt by its solicitors and enters herein its motion for the appointment of a receiver which motion is entered and continued to September 10th, A. D. 1931.

[fols. 13 & 14] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

NOTICE—Filed Sept. 10, 1931

To Mr. A. L. Schapiro, and Mr. H. E. Ambler, Attorneys for American Bond & Mortgage Company, 33 South Clark Street, First National Bank Building, Chicago, Illinois:

Please take notice that we will on the 10th day of September, 1931, upon the opening of Court in the forenoon, or as soon thereafter as counsel can be heard, appear before the Honorable James H. Wilkerson, a Judge in Bankruptcy of said Court, or before such other Judge who may be then there sitting in Bankruptcy, in the court room usually occupied by him on the sixth floor of the Federal Building, located at the corner of Clark and Adams Streets, Chicago, and we will then and there (1) file and have entered a written motion of Royal Indemnity Company, a New York Corporation (a copy of which is handed you herewith); and (2) also ask leave to file in five (5) days thereafter the sworn petition of the Royal Indemnity Company, a New York Corporation, accompanied by exhibits, in support thereof and of said motion; and (3) have said motion and petition set for hearing in a short day to be fixed by the Court; at which time and place you may appear if you see fit.

Moses, Kennedy, Stein & Bachrach, Attorneys for Royal Indemnity Company, a New York Corporation.

Received a copy of the above Notice and of the Motion therein referred to, this 9th day of September, 1931.

A. L. Schapiro.

[fols. 15-18] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

ENTRY OF MOTION FOR LEAVE TO FILE PETITION—Sept. 10, 1931

This day comes the petitioner Royal Indemnity Company by its solicitors and enters herein its motion for leave to

file instanter a petition herein, which motion is entered and continued to September 23, A. D. 1931.

[fols. 19 & 20] IN UNITED STATES DISTRICT COURT

48011

[Title omitted]

ORDER OF CONTINUANCE—Sept. 23, 1931

On motion it is ordered that the motion of the Royal Indemnity Company for leave to file a petition be and the same is hereby continued to October 19th A. D. 1931.

[fols. 21 & 22] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

ORDER OF CONTINUANCE—Sept. 23, 1931

On motion it is ordered that the motion of the bankrupt for the appointment of a Receiver be and the same is hereby continued to October 19th, A. D. 1931.

[fols. 23 & 24] IN UNITED STATES DISTRICT COURT

48011

[Title omitted]

ORDER OF CONTINUANCE—Oct. 19, 1931

It is ordered that the motion of the Royal Indemnity Company for leave to file a petition and the motion for the appointment of a Receiver be and the same is hereby continued to October 27, A. D. 1931.

[fols. 25 & 26] IN UNITED STATES DISTRICT COURT

48011

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—Oct. 27, 1931

This cause coming on to be heard upon the motion of the Royal Indemnity Company for leave to file petition and supplemental petition, after arguments of counsel said motion is taken under advisement.

[fols. 27 & 28] IN UNITED STATES DISTRICT COURT

48011

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—Oct. 27, 1931

This cause coming on to be heard upon the petitioner's motion for the appointment of a receiver, after arguments of counsel said motion is taken under advisement.

[fols. 29 & 30] IN UNITED STATES DISTRICT COURT

48011

[Title omitted]

ORDER GRANTING LEAVE TO FILE PETITION, ETC.—NOV. 11, 1931

The court having heretofore heard the arguments of counsel upon the motion of the Royal Indemnity Company for leave to file a petition and supplemental petition and being now fully advised in the premises,

It is ordered that the motion of the Royal Indemnity Company for leave to file a petition and supplemental petition be and the same is hereby sustained and leave be and the same is hereby given the said petitioner to file petition herein.

And it is ordered that all parties be and they are hereby required to plead to said petition within twenty days from this date.

And it is ordered that the petitioner's motion for the appointment of a receiver be, and the same hereby is, continued.

[fol. 31] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

SUPPLEMENTAL PETITION OF ROYAL INDEMNITY COMPANY—Filed Nov. 11, 1931

To the Honorable Judges of said Court, in bankruptcy sitting:

Your petitioner, Royal Indemnity Company respectfully shows to the court that since the verification of the petition herein on the 19th day of September, 1931, an adjudication in bankruptcy of the American Bond and Mortgage Company has been had in the United States District Court for the District of Maine; that annexed hereto and hereby made a part of this supplemental petition, is a certified copy of the said adjudication in bankruptcy.

Your petitioner therefore respectfully withdraws from its petition the following portion of the prayer thereof, and otherwise in all other respects confirms the said prayer of said petitioner, namely: the clause of the prayer which your petitioner therefore withdraws is the following:

"* * * and that in default of such dismissal all proceedings on and under the said voluntary petition in bankruptcy, filed on September 5, 1931, in the above entitled cause by said alleged bankrupt, be stayed in accordance with General Order No. 6 until the determination on said petition in involuntary bankruptcy so filed in the District Court of the United States for the District of Maine."

Wherefore your petitioner prays the relief prayed in [fol. 32] said original petition as so amended.

Dated Chicago, October 26, 1931.

Royal Indemnity Company, by Saul S. Myers, Its Attorney and Agent.

Duly sworn to by Saul S. Myers. Jurat omitted in printing.

[fols. 33 & 34] DISTRICT COURT OF THE UNITED STATES, DISTRICT OF MAINE, SOUTHERN DIVISION

In Bankruptcy, Inv. No. 584

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, INC., Bankrupt

At Portland, in said District, on the 15th day of October, A. D. 1931, before the Honorable John A. Peters, Judge of said Court, in Bankruptcy, the petition of Royal Indemnity Company and sixteen others that American Bond and Mortgage Company, Inc., be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to Bankruptcy having been heard and duly considered, the said American Bond and Mortgage Company, Inc., is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable John A. Peters, Judge of the said Court, and the seal thereof at Portland, in said District, on the 15th day of October, A. D. 1931.

John F. Knowlton, Clerk. (Seal.)

A true copy. Attest:

John F. Knowlton, Clerk.

[fol. 35] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

PETITION OF ROYAL INDEMNITY COMPANY—Filed Nov. 11, 1931

To the Honorable Judges of said court, in bankruptcy sitting:

1. Your petitioner, the Royal Indemnity Company, respectfully represents that it is and at the times hereinafter mentioned has been a corporation duly organized and created under the laws of the State of New York and authorized and duly empowered by the State of Illinois to do

business therein, and for over five months before, and at the time of the filing of the petition for adjudication in the above entitled proceeding, it was and still is a general unsecured creditor of said alleged bankrupt with a provable claim or debt against said alleged bankrupt in an amount exceeding Twenty Thousand Dollars ($20,000.00) in excess of the value of any and all security which your petitioner, Royal Indemnity Company, may hold or have held; that the nature, character, extent and amount of said claim of Royal Indemnity Company is as follows:

2. Prior to February 16, 1926 the said American Bond and Mortgage Company was engaged in the business of marketing mortgage securities on real property. It wanted [fol. 36] to have better facilities for the marketing of such securities. It desired to secure the guarantee of the Royal Indemnity Company, of the payment of the principal of said securities and the interest thereon. It made application to the Royal Indemnity Company for the execution of bonds guaranteeing the payment of such principal and interest. The Royal Indemnity Company agreed to issue such guarantees upon certain specified conditions.

3. One of the important conditions specified in said contract was that "whenever the Company (Royal Indemnity Company) elects to, and does issue its bond or bonds, the substance of which shall guarantee the payment of the principal and interest of any mortgage securities which the Insured (American Bond and Mortgage Company) may market, that the insured will immediately deliver to the Company, acceptable negotiable securities to the value of five (5%) per cent, of the aggregate par or face value of all of the mortgage securities which the Company shall have guaranteed."

4. Another important condition specified in said contract was that "in the event that the market value of the securities so deposited shall not at any time be equal to the aforesaid percentage, or should the fund created by the deposit of the aforesaid securities become depleted or exhausted by reason of the payment by the Company of any loss under any bond or bonds which it may issue, then, upon demand, the Insured will deliver to the Company

further such securities for the like purpose or (at the option of the Insured) a cash payment so that the market value of the said securities and/or cash shall always be equal to five (5%) per cent of the aggregate or par value of all the mortgage securities then outstanding, which the Company shall have guaranteed."

[fol. 37] A copy of the said agreement is hereto annexed and marked Exhibit "A".

5. The Royal Indemnity Company elected to and did issue its bonds of guarantee in pursuance of the said agreement of February 16, 1926, the substance of which guaranteed the payment of the principal and interest of certain mortgage securities which the American Bond and Mortgage Company marketed. These bonds so marketed and still outstanding aggregate Five Hundred Forty Thousand Seven Hundred dollars ($540,700).

6. The Royal Indemnity Company, however, on its information and belief alleges that a portion of said Five Hundred Forty Thousand Seven Hundred dollars ($540,-700) bonds so guaranteed by it, but not exceeding Twenty-five Thousand dollars ($25,000) thereof, have been bought up by the American Bond and Mortgage Company, and may be now still held by it, and by reason of the matters herein alleged the Royal Indemnity Company denies any responsibility to the American Bond and Mortgage Company under said guarantees on any such bonds so held by the American Bond and Mortgage Company.

A copy of the form of bond in use is hereto annexed and marked Exhibit "B".

A list of the bonds so guaranteed by the Royal Indemnity Company and still outstanding is hereto annexed and marked Exhibit "C".

7. In pursuance of the said agreement of February 16, 1926 the American Bond and Mortgage Company delivered to the Royal Indemnity Company acceptable negotiable securities of the market value, at that time, of five (5%) per cent of the aggregate par or face value of all of the mortgage securities so guaranteed by the Royal Indemnity Company.

[fol. 38] 8. The market value of the securities so deposited by the American Bond and Mortgage Company with the

Royal Indemnity Company has very greatly depreciated and the fund created by the deposit of the aforesaid securities has also become depleted by reason of the payment by the Royal Indemnity Company of losses under the bonds so issued by it guaranteeing the payment of securities so marketed by the American Bond and Mortgage Company and the market value of the securities now on deposit and the cash on hand with the Royal Indemnity Company is not over Four thousand dollars ($4,000) and is not equal to the aforesaid percentage of five (5%) per cent of the aggregate par or face value of all of the mortgage securities guaranteed by the Royal Indemnity Company which are still outstanding in the hands of third parties; and the shortage in such deposit by virtue of the depreciation in such securities and by virtue of such depletion by reason of the payment therefrom of such losses, exceeded Twenty-three thousand dollars ($23,000) at the date of filing the said petition in bankruptcy in the District of Maine, without taking into consideration the interest which the Royal Indemnity Company may be required to pay from time to time on defaulted issues, of which there are many, and without taking into consideration other losses on payments already made to bondholders on defaulted issues but not yet reimbursed to said Royal Indemnity Company from said fund, on the bonds so purchased by said American Bond and Mortgage Company.

[fol. 39] 9. The Royal Indemnity Company, to wit, on April 5, 1930, again on April 9, 1930 and again on May 5, 1930, duly demanded of the American Bond and Mortgage Company that it deliver to it further securities or cash for the like purpose of partially securing the Royal Indemnity Company against loss by reason of the issue of such bonds guaranteeing the payment of securities so marketed by the American Bond and Mortgage Company under such guarantees by the Royal Indemnity Company, so that the market value of such securities and/or cash should equal five (5%) per cent of the aggregate par or face value of all of the mortgage securities guaranteed as aforesaid by the Royal Indemnity Company and still outstanding; but the American Bond and Mortgage Company on each of said occasions refused and still refuses to do so, and there is now already due, owing and unpaid from the American

Bond and Mortgage Company to the Royal Indemnity Company because of such depreciation in securities and because of such depletion, a sum in excess of Twenty-three thousand dollars ($23,000) to date. The bonds so guaranteed aggregate Five hundred forty thousand seven hundred dollars ($540,700).

10. The Royal Indemnity Company has fully performed all of the terms and conditions of the said agreement on its part to be performed but the American Bond and Mortgage Company has refused and still refuses to comply with the aforesaid demand of the Royal Indemnity Company that the American Bond and Mortgage Company deliver further securities or cash and has otherwise failed to carry out the provisions of the said agreement on the part of [fol. 40] the American Bond and Mortgage Company to be performed.

11. In addition to such specified claim, said American Bond and Mortgage Company is also indebted to the Royal Indemnity Company on various other claims in far larger sums by reason of other facts not now set forth, but which said Royal Indemnity Company will set forth in full when presenting its proof of claim against the alleged bankrupt, and such claims all remain wholly unpaid.

12. Your petitioner further shows that said alleged bankrupt is not and was not on September 5th, 1931 a person qualified to file a voluntary petition in bankruptcy in this Court within the meaning of Section 59 (a) of the United States Bankruptcy Act; that said alleged bankrupt is and ever has been since its incorporation in 1910, a corporation organized under and by virtue of the laws of the State of Maine; and that the domicile and residence of said alleged bankrupt is and has always been since its said incorporation, the State of Maine.

13. Your petitioner further shows that said alleged bankrupt did not have its principal place of business within the Northern District of Illinois, for the greater portion of the six months next preceding the date of the filing of said voluntary petition in bankruptcy herein; that said alleged bankrupt did not have any place of business in the Northern District of Illinois or do any business in said District for more than three months and ten days immedi-

ately preceding the date of the filing of the petition in bankruptcy herein.

14. Your petitioner further shows that on the 21st day of May, 1931, in equity suit No. 10539 T. H. Clarke and others, as Complainants, filed their bill of complaint against said American Bond and Mortgage Company in the District [fol. 41] Court of the United States for the Northern District of Illinois, Eastern Division, a copy of which bill in equity is hereto annexed, marked Exhibit D, and hereby made a part hereof.

15. That said American Bond and Mortgage Company did, on the 22nd day of May, A. D. 1931, without service of any process on it, voluntarily appear and file its answer in said equity suit No. 10539 admitting the allegations of said bill of complaint and consenting to the appointment of a receiver of the property and assets of said alleged bankrupt in said equity suit, pursuant to the prayer of said bill of complaint; a copy of such answer to said bill in Equity is hereto annexed, marked Exhibit E, and hereby made a part of this petition; that on the 22nd day of May, A. D. 1931, decrees were entered in said equity proceedings No. 10539 upon such bill and answer, of which decrees true and correct copies are hereto annexed, marked Exhibits F and G, and hereby made a part of this petition; that pursuant thereto on said 22nd day of May, A. D. 1931, the co-receivers appointed by such decrees duly qualified as such and immediately on that day entered into possession of all the assets of said alleged bankrupt in the Northern District of Illinois, including also all its offices there and its books and papers, and ever since the said 22nd day of May, A. D. 1931, said co-receivers have had exclusive possession and control of and have administered and are in possession of and are administering the property and assets of said alleged bankrupt in said Northern District of Illinois to the exclusion of said alleged bankrupt; that at no time since said 22nd day of May, A. D. 1931 has said alleged bankrupt had any custody or possession or administration of the property and assets of said alleged bankrupt or any thereof in the Northern District of Illinois; that since said 22nd day of May, A. D. 1931, said alleged bankrupt has transacted no business in the Northern District of Illinois [fol. 42] and has had no office therein and has not at any

time had its principal place of business therein; that ever since said 22nd day of May, A. D. 1931, said co-receivers have been engaged in liquidating the property and assets of said alleged bankrupt, and have not been buying any property or assets and have not been selling any of the property and assets of said alleged bankrupt, except by way of liquidation thereof.

16. Your petitioner further shows, on information and belief, that neither the stockholders nor any meeting or meetings of the stockholders of the American Bond and Mortgage Company have authorized the filing of said voluntary petition in bankruptcy by the American Bond and Mortgage Company and no legal meeting of its stockholders has been called or held for that purpose, and upon its information and belief that under the laws of Maine, under which said American Bond and Mortgage Company is organized and created, in force at all times since 1930, only the stockholders in meeting duly called for the purpose can or could authorize a Maine corporation to go into voluntary bankruptcy, and the directors of such a Maine corporation have no power express or implied to authorize the filing of a petition in voluntary bankruptcy.

17. Your petitioner further shows that said alleged bankrupt has not had either its residence or its domicile within the Northern District of Illinois for any part of the six months immediately preceding the date of the filing of said petition in bankruptcy herein, but during all said time has been domiciled and has resided in the State of Maine.

18. Your petitioner further shows that, to wit, on the 19th day of February, 1931, said American Bond and Mortgage Company made its annual sworn report to the Secretary of State of the State of Illinois, stating therein that it had done no business in Illinois in 1930 and had had no property in the State of Illinois during that year.

[fol. 43] 19. Your petitioner further shows that, prior to the year 1930, the principal place of business of the American Bond and Mortgage Company had long been in the City of New York, in the State of New York.

20. Your petitioner further alleges on its information and belief, that the only business done in the Northern Dis-

trict of Illinois in connection with the affairs of the American Bond and Mortgage Company between January 1, 1931 and May 21, 1931 were acts of liquidation of the assets of the American Bond and Mortgage Company and payments on its debts, and that the said American Bond and Mortgage Company did no other or different business in Illinois between January 1st, 1931 and May 21, 1931 than it had done in the year 1930. And in both years 1930 and 1931, the business done in Illinois in the name of the American Bond and Mortgage Company which was simply such liquidation, was done by said Chicago Title & Trust Co. and not by said American Bond and Mortgage Company.

That a certified copy of the said report to the State authorities of Illinois is hereto annexed and marked Exhibit G-1.

21. Your petitioner further shows that by reason of the foregoing facts this Court had no jurisdiction to adjudge said American Bond and Mortgage Company, a corporation, bankrupt, upon its said pretended voluntary petition.

II

22. Your petitioner further shows that an involuntary petition in bankruptcy against the said American Bond and Mortgage Company was filed in this Court on the 21st day of May, 1931 by Bellamy-Neff Company, Jackson Towers Building Corporation, Walker G. Everett and R. W. Kenyon; and that on the 25th day of May, 1931 an involuntary petition in bankruptcy was filed in the District Court of the United States for the District of Maine against said American Bond and Mortgage Company, by Royal Indem-[fol. 44] nity Company, Lucy G. Adamson, Frances G. Losee, Dr. M. A. Losee, Parkes D. Wendell, Jesse H. Owens, Agnes E. Larkin, Daniel Larkin, Newell Becker, Ralph W. Eldredge, J. L. Hone, Cora Vunck, Charles M. Winchester, William Lawrie, Minnie C. Bame, S. J. Bennett and Lloyd S. Cheney as petitioners, in which said District of Maine said American Bond and Mortgage Company has at all times resided and been domiciled, each of which proceedings is still pending. That copies of the said petition in the District Court of the United States for the District of Maine and of the answer of the American Bond and Mortgage Company thereto are hereto annexed, marked respectively Exhibits H and I, and are hereby made parts hereof.

23. That on the 3rd day of September, 1931, said American Bond and Mortgage Company by its attorneys in said proceeding in the United States District Court for the District of Maine filed in that proceeding in that Court a paper withdrawing its said answer Exhibit I, of which paper a true and correct copy is hereto annexed, marked Exhibit I-1, and hereby made a part hereof. No other answer to the petition in involuntary bankruptcy in that Court has been filed.

That on the 5th day of September, 1931, this Court, on a motion to stay the proceedings on the involuntary petition in bankruptcy so filed in this Court as aforesaid, to await the decision of the District Court of the United States for the District of Maine, made the following order:

"Comes the American Bond and Mortgage Company by its attorneys and upon arguments presented to the court on its motion to dismiss.

"It is Hereby Ordered that the motion presented to dismiss petition in bankruptcy be and same is hereby over-[fol. 45] ruled and the proceedings on said petition to be stayed until the hearing on the petition in bankruptcy filed against the respondent herein in the District Court for the District of Maine or until the further order of the court."

24. Your petitioner further shows that the said American Bond and Mortgage Company filed its certain petition in said District Court of the United States for the District of Maine for the transfer of the bankruptcy proceedings there pending to this Court, of which petition a true and correct copy is hereto annexed, marked Exhibit J, and hereby made a part hereof; and that a copy of the answer filed by the petitioning creditors in said proceedings in Maine to such petition for transfer is hereto annexed, marked Exhibit K, and is hereby made a part hereof. No hearing has yet been had on such petition for transfer and same is still pending. And the allegations in such answer Exhibit K contained are hereby realleged as if here repeated fully at length.

25. Your petitioner further shows that no notice whatever of the filing of said voluntary petition in bankruptcy in this Court was given to the petitioners in the said in-

voluntary bankruptcy proceedings in Maine (of whom your petitioner is one) or to their attorneys until after the entry of the order of adjudication of bankruptcy upon said voluntary petition; and by reason thereof, the entry of said adjudication order was improper. Said American Bond and Mortgage Company was fully advised of the pendency of said proceeding in Maine at the time of filing its said voluntary petition, as well as of the said order of this Court staying the proceedings on the said involuntary bank-
[fol. 46] ruptcy petition filed in this Court.

26. That it was only after the filing of such order that the voluntary petition in bankruptcy herein was filed in this Court by the American Bond and Mortgage Company.

27. That it is of great moment to the estate that adjudication be had on the said involuntary petition in bankruptcy so filed in the District Court of the United States for the District of Maine on May 25th, 1931 rather than on such voluntary petition so filed in this Court on September 5, 1931, by reason of the fact that between the 25th day of January, 1931 (four months prior to the filing of said petition in Maine) and the 5th day of May, 1931 (four months prior to the filing of said voluntary petition in this Court), large payments and transfers were made to various creditors of the said alleged bankrupt by it, amounting to, as your petitioner is informed and believes, many hundreds of thousands of dollars, which were preferential in character, and which all would be validated by an adjudication on the voluntary petition filed on September 5, 1931, to the prejudice of the estate, and to the prejudice of the rights of the petitioning creditors in the Maine proceeding, of whom your petitioner was one.

28. Your petitioner further shows that the petition in involuntary bankruptcy so filed in this court on May 21, 1931 against said American Bond and Mortgage Company alleges as acts of bankruptcy a payment to H. D. Watts Company on February 26, 1931, of a sum in excess of $362,000 and a payment of $2500 to the First National Bank of Davenport, Iowa, on May 1, 1931, both of which payments were made more than four months prior to the filing of said voluntary petition and within four months prior to the filing of such petition for adjudication in the

[fol. 47] District Court of the United States for the District of Maine; both of which were alleged in such petition to have been preferential in character and to constitute acts of bankruptcy on the part of said American Bond and Mortgage Company.

29. Your petitioner further shows that it is informed by the United States Fidelity and Guaranty Company and believes that the payment to said H. D. Watts Company so alleged was made on February 25th, 1931, under the following circumstances and in the following manner and amounts:

Said H. D. Watts Company prior to September 1st, 1930, had recovered a judgment against said American Bond and Mortgage Company in the Supreme Court of Massachusetts, which, with interest and costs, on February 25th, 1931 amounted to $394,000. That said United States Fidelity and Guaranty Company had, in 1930, at the request of said American Bond and Mortgage Company given a supersedeas undertaking on an appeal from said judgment in the sum of $350,000. That upon the affirmance of said judgment on appeal the said United States Fidelity and Guaranty Company paid to the said judgment creditor on the 25th day of February, 1931 the sum of $350,000 in cash, and at or about the same time and between January 25th, 1931 and May 5th, 1931 the said American Bond and Mortgage Company paid to said H. D. Watts Company, in satisfaction of the remaining $44,000 due on said judgment, $12,000 in cash and bonds of the Book Washington Boulevard Building held by said American Bond and Mortgage Company of the par value of $32,000. And your petitioner further shows on its information and belief that such payment of $12,000 in cash [fol. 48] and $32,000 in bonds was made by the American Bond and Mortgage Company while it was insolvent and with intent to prefer said H. D. Watts Company over other creditors of said American Bond and Mortgage Company of the same class, and that said H. D. Watts Company at the time of receiving such payments of $12,000 in cash and $32,000 in such bonds had notice and reasonable cause to believe that said American Bond and Mortgage Company was insolvent and without assets sufficient to pay its debts.

30. Between said January 25, 1931 and May 5, 1931, your petitioner shows payments were made by said American

Bond and Mortgage Company to the following several banks on account of claims held by them respectively, in the following amounts:

Name of bank	Amount of loans as of Sept. 7, 1929
American State Bank, Detroit, Mich	$135,960.00
Atlantic National Bank, Boston, Mass	91,900.00
Central Trust Company, Cincinnati, O	97,467.00
Central Trust Company of Illinois	315,230.00
Chatham Phenix National Bank & Trust Company, New York, N. Y	224,100.84
Colonial Trust Company, Pittsburgh, Pa	9,609.00
Commercial National Bank, Peoria, Ill	30,000.00
Detroit Savings Bank, Detroit, Mich	130,500.00
First Mechanics Nat'l Bank, Trenton, N. J	57,092.50
First National Bank, Boston, Mass	117,980.00
First National Bank, Chicago, Ill	275,425.00
First National Bank, Davenport, Iowa	60,000.00
First Trust Company, Albany, N. Y	49,045.00
Grand Rapids Savings Bank, Grand Rapids, Mich	28,600.00
[fol. 49]	
Guaranty State Bank, Detroit, Mich	50,000.00
Jefferson Co. Nat'l Bank, Watertown, N. Y	33,988.90
National Bank of Commerce, Detroit, Mich	125,000.00
Pennsylvania Co. of Philadelphia, Philadelphia, Pa	160,000.00
Philadelphia Nat'l Bank, Philadelphia, Pa	169,250.00
Utica Trust & Deposit Co., Utica, N. Y	99,150.00
	$2,478,323.24

31. That such payments to said banks respectively during such period between January 25, 1931 and May 5, 1931, as your petitioner is informed and believes, were made while the American Bond and Mortgage Company was insolvent and with intent to prefer the payees over other creditors of the same class, and aggregated over $20,000, and were each made with intent to prefer the payee over other creditors of the American Bond and Mortgage Company of the like class, and did so prefer such several payees. That, as your petitioner is informed and believes, each of said banks at the time of receiving such payments respectively, knew and had notice and reasonable cause to believe that said American Bond and Mortgage Company was at the time of such payment insolvent and unable to pay its debts in full, and had notice and reasonable cause to believe that such payment to it was made with intent to prefer it over other creditors of said American Bond and Mortgage Company of the same class. Each of said banks held security for a part of its claims but the effect of such payments in each case was to make the same applicable to the unsecured portions

of their claims respectively, which unsecured portion in each instance exceeded the amount of the payment so made.

32. That between the 25th day of January, 1931, and the [fol. 50] 5th day of May, 1931, to wit, on each of the following days, namely the 9th day of March, 1931, the 1st day of April, 1931 and the 13th day of April, 1931 said American Bond and Mortgage Company paid to the Merchants National Bank of Poughkeepsie, the sum of $106.17 on account of a note for $25,000 of said American Bond and Mortgage Company held by said bank. Said bank held security for said note not exceeding $15,000 in value, no part of which was released upon or in consideration of said payments or any of them, and which security it still holds. That said three payments of $106.17 were each made by said American Bond and Mortgage Company while it was insolvent to said Merchants National Bank with intent to prefer it over its other creditors of the same class, and said Merchants National Bank at the time of receiving each such payment knew and had notice and reasonable cause to believe that said American Bond and Mortgage Company was then insolvent and unable to pay its debts in full.

33. During such period from January 25, 1931, to May 5, 1931, the said American Bond and Mortgage Company while insolvent made numerous other large payments to various other creditors and other persons whom it was seeking to prefer, who each had notice and reasonable cause to believe that it was insolvent at the times they severally received such payments.

34. That during said period between January 25, 1931 and May 5, 1931, said American Bond and Mortgage Company while insolvent, as your petitioner is informed and believes, made other large payments, running into the hundreds of thousands of dollars, to various creditors or pretended creditors who each, at the time of receiving such payments, had notice and reasonable cause to believe that said American Bond and Mortgage Company was insolvent [fol. 51] and unable to pay its debts, and, among other matters, in connection with the Whitehall property in Florida.

35. That all such payments and other similar payments of large amounts were in the main made by direction of the Chicago Title & Trust Company, which was throughout

that period managing such disbursements of the funds of the alleged bankrupt, and said Chicago Title & Trust Company has, individually and as such receiver appointed by this Court, records of payments so made out of the assets of the American Bond and Mortgage Company during such period between January 25, 1931 and May 5, 1931, and your petitioner prays that it be required to produce such records and disclose the amounts and dates of such payments and the persons to whom paid during said period from January 25, 1931 to May 5, 1931 inclusive, and that this Court inquire fully into the payees, dates and amounts of such payments and the preferential character thereof as establishing the importance to the estate of adjudication under said involuntary petition filed on May 25, 1931, in the District Court of the United States for the District of Maine, instead of under said voluntary petition filed in this Court on September 5, 1931.

36. That your petitioner is unable at this time to specify exactly the sums so disbursed by way of preferences or the payees of such several payments and prays that these be inquired of by the Court and full account thereof taken; but, in particular, your petitioner, on information and belief, charges that between the 25th day of January, 1931 and the 5th day of May, 1931, large sums were so paid to banks, whose claims were secured only in part, and large sums were paid and important transfers of property made by the said American Bond and Mortgage Company while [fol. 52] insolvent in connection with the so-called Whitehall property in Florida to various persons who at the time of such payments severally had knowledge and notice and reasonable cause to believe that said American Bond and Mortgage Company was insolvent and that such payments were preferential. And that the effect of such payments was to enable such Banks and other persons to obtain a greater percentage on their claims than other unsecured creditors of the same class.

37. Such preferential payments and transfers so made between January 25, 1931 and May 5, 1931, would be recoverable if adjudication be granted on the involuntary petition filed on May 25, 1931, as preferential in character, but none of them could be recovered as preferential if adjudication in bankruptcy stand on the said voluntary petition filed on September 5, 1931.

38. An adjudication upon the voluntary petition filed on September 5, 1931, would date only from that date, and would also tend to validate the acts of the said equity receivers, appointed after the filing of the petition in bankruptcy in this court on May 21, 1931, and done after the filing of the said petition in bankruptcy in the District Court of the United States for the District of Maine invoking the paramount jurisdiction of the Bankruptcy Court, including the preferential payment, under order of the Equity Court of date the 11th day of June, 1931, by such Receivers, to Crosby & Murphy of $5207.06 of an antecedent claim, after the filing of both such petitions in involuntary bankruptcy.

39. Your petitioner further shows that the adjudication on said voluntary petition in bankruptcy was so made without any notice to your petitioner and was in fraud of the order of this Court made on September 5, 1931, on the application of this petitioner, so staying the proceedings [fol. 53] on the involuntary petition in bankruptcy filed in this Court in accordance with General Order in Bankruptcy No. 6, which General Order was equally applicable to said voluntary petition, and in fraud of the jurisdiction acquired by the District Court of the United States for the District of Maine upon the said involuntary petition in bankruptcy so pending in that Court, and of the rights of your petitioner and the other said petitioners in said involuntary bankruptcy proceedings against the American Bond and Mortgage Company so instituted in the District Court of the United States for the District of Maine, in that proceeding; and was against the interests of the estate.

40. Your petitioner further charges on its information and belief that the said voluntary petition is but one of a long series of steps taken by and on behalf of the holders of over 85% of the common stock of the American Bond and Mortgage Company, namely William J. Moore and Hattie K. Moore, his wife, and his three sons, Kenneth W. Moore, C. C. Moore and Harold A. Moore and his brother, C. B. Moore (who were prior to 1930 the directors and officers and in full control of the conduct of the affairs and business of the American Bond and Mortgage Company and diverted large amounts of its assets into their own pockets, to the prejudice of the Company and its creditors),

to control the liquidation of its affairs either through their own appointees or selections, or through their misuse of the powers and machinery of the Courts, and to prevent or hamper investigation of the misconduct and frauds of the said Moores as officers and directors in control of the affairs of said American Bond and Mortgage Company and [fol. 54] their disposition of its assets to themselves, and to prevent obtaining adequate redress therefor, and to evade the recovery of preferential payments and transfers made between January 25th, 1931 and May 5th, 1931.

41. Among the earliest of such steps was an agreement of September 10, 1929 between the American Bond and Mortgage Company and a large number of banks which were creditors of said American Bond and Mortgage Company and a Committee for such creditors consisting of Edward E. Brown and others therein named, of which agreement an unsigned copy is hereto annexed and marked Exhibit "L".

42. In connection with such agreement of September 10, 1929, a further agreement was then made with the Moores by which the Chicago Title and Trust Company then took over the management of the affairs of the American Bond and Mortgage Company as agent, and in October, 1929, put one of its Vice-presidents, Herbert Becker, in charge of the New York office of the American Bond and Mortgage Company, and said Chicago Title and Trust Company then put its then Trust Officer and present president, Holman D. Pettibone, in charge of the Chicago, Illinois office of the American Bond and Mortgage Company and whatever business was thereafter transacted in Illinois in the name of the American Bond and Mortgage Company was transacted by said Chicago Title and Trust Company, which was an active participant in the making of all the preferential payments between January 25, 1931 and May 5, 1931, complained of and which it is sought to recover.

43. Under said agreement of September 10, 1929, Exhibit "L" hereof, the Chicago Title and Trust Company also became interested as the representative of such banks as signed such agreement, which besides many other banks included the banks to which such preferential payments [fol. 55] were made between January 25, 1931 and May 5,

1931, which it is now sought to validate by securing adjudication on the voluntary petition filed September 5, 1931, instead of adjudication on the said earlier involuntary petition filed May 25, 1931 in the District Court of the United States for the District of Maine.

44. Important officers and stockholders of the Chicago Title and Trust Company were closely affiliated with said Moores and friendly to them. The Chicago Title and Trust Company was also, on or about October 24th, 1929, made depositary of the Committee of Holders of Debenture Bonds of the American Bond and Mortgage Company.

45. On or about February 8th, 1930, it was also made one of the depositaries of a Committee for the Protection of the holders of Preferred Stock of the American Bond and Mortgage Company. Such Committees were, on their face, self-appointed, but, in fact, their formation, as your petitioner is informed and believes, was instigated and brought about and their membership to a controlling extent, selected by the said Moores. The Moores on or about the 15th day of July, 1930 transferred their common stock in the American Bond and Mortgage Company, which common stock held the entire voting power in that corporation, to voting trustees, who were their own nominees, who named as directors of the American Bond and Mortgage Company persons selected by the Moores, including as directors said Harold Moore, and among the voting trustees so selected by the Moores to protect their interests was Holman D. Pettibone, who was then Trust Officer of the Chicago Title and Trust Company and is now its President.

46. When it became apparent that involuntary bankruptcy proceedings brought by general creditors, who were [fol. 56] not being preferred and who were not friendly to the Moores, were impending, the Moores, with the knowledge and assistance of the Chicago Title and Trust Company, and through the directors of the American Bond and Mortgage Company, so controlled, procured the filing of the said bill in equity and the answer thereto, and thereby secured from this Court the appointment as Equity Receivers, of the Chicago Title and Trust Company and of Arthur W. Draper, whom they, through their said nominees as directors, had elected and installed as President of the American Bond and Mortgage Company.

47. The Chicago Title and Trust Company and the American Bond and Mortgage Company at the same time, together with the plaintiffs in said equity bill, in order to protect their control over the liquidation of the affairs of the corporation, caused the filing of the said petition in involuntary bankruptcy in this Court by persons friendly to the said Moores and to the American Bond and Mortgage Company at the same moment with the said bill in equity, as a protective measure to ward off other bankruptcy proceedings until more than four months after the appointment and qualification of said equity receivers, and with no intention of prosecuting the said voluntary bankruptcy petition so filed in this court on May 21, 1931, of which a true and correct copy is hereto annexed, marked Exhibit "M". The said bankruptcy petition so filed on May 21, 1931 in this Court was intended by the petitioners therein named to be cooperative with the said bill in equity and said petitioners though their said petition was filed at the same moment as said bill in equity and with knowledge of the filing of said bill in equity raised no objections to the appointment of the equity receivers or to their taking over [fol. 57] the assets of the American Bond and Mortgage Company and purposely allowed their said petition in involuntary bankruptcy to remain in abeyance.

48. That on September 5, 1931, upon the entry of this court's order deferring action on said involuntary proceeding in this Court, the said American Bond and Mortgage Company, foreseeing the probability of adjudication in bankruptcy in the proceeding in the District Court of the United States for the District of Maine, on the petition there so filed, caused to be filed the said voluntary petition in this Court to prevent such involuntary adjudication, and the consequent invalidation of all preferential payments made by the American Bond and Mortgage Company between January 25, 1931 and May 5, 1931, and to prevent the inquiry into the transactions of the American Bond and Mortgage Company, its officers and stockholders that would be apt to follow on an adjudication upon such involuntary petition so filed by outside creditors of the American Bond and Mortgage Company.

Wherefore your petitioner prays that this Court make full inquiry into the facts above alleged and that an order

be entered herein vacating the orders entered on September 5, 1931 in the above entitled cause adjudging the American Bond and Mortgage Company bankrupt and referring said cause to Referee in Bankruptcy Garfield Charles, Esq., for the reasons above stated, and that said voluntary petition be dismissed for lack of jurisdiction; and that in default of such dismissal all proceedings on and under the said voluntary petition in bankruptcy, filed on September 5, 1931 in the above entitled cause by said alleged bankrupt, be stayed in accordance with General Order No. 6 until the determination on said petition in involuntary bankruptcy so filed in the District Court of the United States for the District of Maine, and that your petitioner have such other and [fol. 58] further relief as may be just. And your petitioner will ever pray.

Dated New York, September 19th, 1931.

Royal Indemnity Company, by Claude E. Trinder, Its Second Vice-President. (Seal.) Moses, Kennedy, Stein & Bachrach, Selden Bacon, Saul S. Myers, Attorneys and Counsel for Royal Indemnity Company.

[fol. 59] *Duly sworn to by Claude E. Trinder. Jurat omitted in printing.*

[fol. 60] EXHIBIT "A" TO PETITION

This agreement, made and entered into this 16th day of February, 1926, between the Royal Indemnity Company, hereinafter called the "Company", and the American Bond and Mortgage Company, Inc., hereinafter called the "Insured", witnesseth:

Whereas, it is the business of the Insured in part to market mortgage securities on real property; and to better facilitate such marketing, the Insured desires a guarantee of the payment of the principal and interest thereon; and

Whereas, the Insured has made application to the Company for the execution of a bond or bonds, guaranteeing the payment of such principal and interest, when, as and if, the Insured shall market such securities; and

Whereas, the Company will issue such bond or bonds upon the condition amongst others, that the Insured will deposit with the Company, in accordance with the term

hereof, satisfactory negotiable collateral for the purpose of partially securing the company against possible loss by reason of the issuance of such bond or bonds;

Now, therefore, in consideration of the premises, and the sum of One ($1.00) Dollar, lawful money of the United States of America, each to the other paid, the parties hereto agree as follows:

That whenever the Company elects to, and does issue its bond or bonds, the substance of which shall guarantee the payment of the principal and interest of any mortgage [fol. 61] securities which the Insured may market, that the Insured will immediately deliver to the Company, acceptable negotiable securities to the value of five (5%) percent of the aggregate par or face value of all of the mortgage securities which the Company shall have guaranteed.

In the event that the market value of the securities so deposited shall not at any time be equal to the aforesaid percentage, or should the fund created by the deposit of the aforesaid securities become depleted or exhausted by reason of the payment by the Company of any loss under any bond or bonds which it may issue, then, upon demand, the Insured will deliver to the Company further such securities for the like purpose or (at the option of the Insured) a cash payment so that the market value of the said securities and/or cash shall always be equal to five (5%) percent of the aggregate or par value of all the mortgage securities then outstanding, which the Company shall have guaranteed. And in the event that the provisions hereof are fully lived up to and fulfilled by the Insured, it is understood and agreed that the liability of the Insured shall be, and hereby is limited to the said deposit. It is the intent hereof that the purpose of this agreement is to clearly fix the liability of the Insured to the Company in the event of loss to an amount not exceeding five (5%) percent of the aggregate or par value of all mortgage securities, issued and outstanding at any fixed time, which the company may have guaranteed.

[fol. 62] Should the Insured refuse upon demand to make any deposit of the securities herein required, the Company may summarily apply to a Court of Equity of competent jurisdiction for a decree, specifically requiring the deposit of such securities.

The Company shall have the right, at any time, to apply all or any part of the deposit herein made, to the payment

of any loss sustained upon any bond or bonds which it may have issued, notwithstanding that the amount of loss upon any separate issue of mortgage securities which the Company shall have guarantee- may exceed the specific deposit covering such guaranty, and for that purpose the Company may, upon giving two (2) days written notice to the insured by mail, addressed to 345 Madison Avenue, New York City, sell, assign and deliver and transfer the whole or any part of the said securities at any available market to fully reimburse the Company for such payment or losses together with legal or other costs, charges and expenses incident to such sale; and the Company is hereby granted full right, power and authority so to do, the Insured hereby ratifying and confirming any action of the Company in connection therewith. And upon such sale, the right is also granted to the Company to become purchasers thereof, freed and discharged from any equity of redemption.

The Company upon being furnished with satisfactory evidence of the discharge and release of any and all liability under any bond or bonds which it may have issued for the payment aforesaid, shall return to the Insured the balance, [fol. 63] if any, of such securities and/or cash theretofore deposited.

If the Insured has complied in all respects with the terms, conditions and obligations upon its part to be performed hereunder, then the Company agrees to permit the Insured to receive interest as it accrues on any of the bonds deposited by the Insured as collateral herein.

The execution of this agreement shall inure to the benefit of, and be binding upon, the respective parties, their successors and assigns.

In witness whereof the parties have by their respective Vice Presidents duly executed this instrument in duplicate the day and year first above mentioned, and have also caused their respective corporate seals to be affixed the said day and year.

American Bond & Mortgage Co., Inc., by (Signed) Hayden W. Ward, Vice-President. Royal Indemnity Company, by (Signed) Claude E. Trinder, Vice-President.

In presence of: (Signed) Ruth W. Moore.

[fol. 64] STATE OF NEW YORK,
County of New York,
City of New York, ss:

On this 15th day of February, 1926, before me personally came Hayden W. Ward to me known, who being by me duly sworn did depose and say that he resides in the City of Kew Gardens, State of New York; that he is the Vice President of the American Bond and Mortgage Company, Inc. the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

Ruth W. Moore, Notary Public, New York County.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On this 17th day of February, 1926, before me personally came Claude E. Trinder to me known, who being by me duly sworn did depose and say that he resides in the City of Mount Vernon, State of New York; that he is the Vice President of the Royal Indemnity Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(Signed) H. E. Scanlon, Notary Public, New York County.

[fol. 65] EXHIBIT "B" TO PETITION

Royal Indemnity Company

Head Office: New York

Milford E. Jewett, President

Bond No.: SX —. Amount: $—

The Royal Indemnity Company, a New York corporation (hereafter designated as the "surety company"), for and

in consideration of the payment to the "surety company" by the Insured of an annual premium of one half of one per centum of the aggregate par or face value of all of the bonds or certificates described in Schedule "A" attached hereto, and in further consideration of the terms and conditions hereof, hereby guarantees to —— —— and all subsequent owners and holders of the bonds or certificates listed and described in said Schedule "A" subject, however, to the conditions hereinafter set forth (each and every person or corporation to whom, under this clause, this guarantee runs being hereafter included in the designation of "the Insured"):

First. Payment of interest, at the rate of — per centum per annum, which shall accrue from the effective date hereof upon the bonds or certificates described in said schedule "A", within five days after the same shall have become due and payable.

Second. Payment of the principal and of every installment thereof as soon as collected, but in no event later than eighteen (18) months after it shall become due and [fol. 66] payment thereof shall have been demanded in writing of surety company by the Insured together with the regular payment of interest at the rate guaranteed from the due principal date to the date of payment of such principal.

Provided, however, that this guarantee is given by the surety company and is accepted by the Insured subject to the following express conditions:

(1) That this bond shall become effective upon payment of the first annual premium heretofore mentioned to the surety company or its duly authorized agent and will be continued from year to year if the annual premium heretofore mentioned is paid for any such year within 5 days after notice in writing by the Surety to the Insured so to do and in the event that said premium is not paid as aforesaid, all liability of the surety company hereunder shall cease as of the said due date.

(2) That the Insured shall promptly notify the surety company in writing of any assignment of any such bonds, certificate or certificates and that any such assignment must be accepted by the assignee subject to the terms and con-

ditions of this guarantee. A transfer by the Insured to itself, individually or with others, acting in any fiduciary capacity, shall not be considered an assignment within the meaning of this clause.

(3) That the Insured shall promptly notify the surety [fol. 67] company in writing of any action or proceeding of which the Insured has knowledge, affecting any such bond, bonds, certificate or certificates, and of any rights or claims thereunder.

(4) That in event of default in the payment of either interest or principal the Insured shall allow the surety company to exercise the right of option secured to the Insured by such bond, bonds, certificate or certificates and that without further notice or authorization to the Insured the company is hereby authorized to enforce payment in the name of the Insured from time to time of any sums which may become due under any such bond, bonds, certificate or certificates.

(5) That in the event of default in the payment of any interest due upon said bond, bonds, certificate or certificates, the surety company may, if it so elects, pay to the Insured the principal sum and interest due on said bond, bonds, certificate or certificates, and the Insured shall thereupon assign such bond, bonds, certificate or certificates, together with all rights and claims thereunder, to the surety company or to such other person as it may designate.

Signed, sealed and dated this —— —, ——.

Royal Indemnity Company, by —— ——, Resident Vice-President. —— ——, Resident Assistant Secretary.

Schedule A, Redemption of Bonds.

[fol. 68] EXHIBIT "C" TO PETITION

Royal

Claim	File	Bond	Assured	Penalty
15367	184108	SX-143747	A. W. & M. Eck	5,000
15384	183788	SX-143478	Norman Keith	9,000
15385	187634	SX-146740	Dora E. McCann	7,000
15386	190236	SX-149013	C. W. Lynch	5,000
15387	191796	SX-150407	R. J. & Ed. Spettel	10,000
15388	197737	SX-155623	C. W. Lynch	5,000
15402	198522	SX-156321	Mrs. C. B. Lynch	2,500
15430	201441	SX-158893	A. W. Humphries	500
15445	186840	SX-146062	Ed. Patten	3,000
15449	205358	SX-162274	M. C. Simmons	1,000
15450	207077	SX-163795	H. L. Grace	1,000
15415	206025	SX-162856	M. D. Andrews	1,000
15452	185228	SX-144686	C. T. Hubbell	1,000
15453	178778	SX-139189	Mrs. N. E. Brandow	2,000
15454	178776	SX-139187	L. Beardslee	4,000
15455	187156	SX-146337	A. I. & S. D. Miller	3,000
15521	217527	SX-173203	Mrs. A. F. Edgerly	12,600
15541	213988	SX-170020	Mrs. & Mr. H. J. Felts	10,000
15542	186839	SX-146061	All Souls Church	8,000
[fol. 69]				
15574	189406	SX-148282	Mrs. C. A. Howitz	5,000
15575	200916	SX-158457	C. W. Lynch	1,000
15577	202855	SX-160086	"	5,000
15578	178781	SX-139192	Mrs. T. Hankammer	2,000
15579	178777	SX-139188	Mrs. Ida McBiffert	2,000
15827	207864	SX-164509	H. V. Ferrell	3,500
17624	191048	SX-149736	Jos. Reiman	500
17714	183722	SX-143430	Mr. A. E. Lalouette	35,500
17718	209845	SX-166263	Chas. Robbins	1,000
17719	187918	SX-146965	Dora E. McCann	2,000
17791	188318	SX-146965	S. E. Lichstein	500
18070	207862	SX-164507	P. W. Kinney	3,000
18122	195170	SX-153408	Olmstead & Mulhall	20,000
18389	221351	SX-176668	Verhovay Aid Ass'n	10,000
18521	194763	SX-153062	Universalist Church	5,000
18593	201442	SX-158894	Agnes W. Humphries	500
18743	194353	SX-152741	Mrs. F. J. Sanderson	2,000
18913	198521	SX-156320	Dr. H. F. Morin	1,000
18999	176431	SX-137162	Masonic Homes	55,000
19029	192200	SX-150761	Dr. S. Eschelman	5,000
[fol. 70]				
19035	212398	SX-168578	D. A. Letourneau	500
19070	207863	SX-164508	Mrs. C. Leopard	13,000
19122	193017	SX-15132	Josie B. & I. C. Irish	6,000
19359	197738	SX-155624	Alma B. Earl	500
19362	197647	SX-155551	"	2,000
19363	191638	SX-150271	Dora S. Lewis	1,000
19841	183789	SX-143479	C. W. Lynch	2,000
19857	194549	SX-152871	Marg. Johnston	5,000
19858	201443	SX-158895	Dora E. McCann	2,000
19872	196672	SX-154704	Grace Wick	2,000
19885	209844	SX-166262	Jos. Rosenmiller, Jr	1,400
20249	203413	SX-160544	Mrs. S. M. Dyer	500
20350	198871	SX-156625	E. Humphries	1,000
20464	178780	SX-139191	Dr. Kaufman Schlivek	10,000
20601	185857	SX-145225	Mrs. G. H. Smith	5,000
20662	186386	SX-145684	C. T. Hubbell	1,000
21350	209132	SX-165054	Ogdensburg Hospital	4,000

Claim	File	Bond	Assured	Penalty
18881	198173	SX-156015	Guilford Trust Company	2,000
22873	191169	SX-149854	J. C. Sheldon	5,000
22909	212403	SX-168583	E. F. Skillings	1,500
22220	214367	SX-170370	J. B. & I. C. Irish	500
[fol. 71]				
.....	195397	SX-153598	Mr. F. Gertner	6,000
.....	180328	SX-140502	L. B. Buckbee	10,000
.....	180329	SX-140503	Clotilde Hout	10,000
.....	180914	SX-14120	K. J. Spettel	10,000
.....	184203	SX-143819	Norman Keith	1,000
.....	186945	SX-146517	Amity Chapter RAM	5,000
.....	189719	SX-148553	Fanny Vogel	7,000
.....	191168	SX-149853	Anna Corowin	500
.....	191226	SX-149906	B. P. Barnes	1,500
.....	191227	SX-149970	Elsie Schliwek	5,000
.....	191228	SX-149908	Birkenfeld	5,000
.....	191416	SX-150077	A. Schnieder	1,000
.....	191415	SX-150078	Frank Schnieder	1,000
.....	191417	SX-150079	Anna Schnieder	1,000
.....	192124	SX-150689	D. Gregorey	5,000
.....	192125	SX-150690	A. Russell	1,500
.....	194352	SX-152740	I. D. Warner	2,000
.....	195168	SX-153406	Penn. Co. for Ins. on Lives & Granting Annuities	50,000
.....	196671	SX-154703	R. K. Wick	1,000
.....	196818	SX-154820	C. W. Lynch	2,000
[fol. 72]				
.....	196819	SX-154821	C. P. Kimball	1,000
.....	196820	SX-154822	M. E. Day	2,500
.....	197093	SX-155067	Manistee Cty. Svgs. Bk	25,000
.....	197094	SX-155068	Concord Free Public Library	6,000
.....	197005	SX-155069	Leo Weller	5,000
.....	197401	SX-155336	L. E. Kenedy	2,500
.....	197403	SX-155338	J. W. Allser	10,000
.....	197402	SX-155337	C. W. Lynch	2,000
.....	200916	SX-158456	C. W. Lynch	1,000
.....	201438	SX-158890	Ogdensburg City Hospital	1,000
.....	201439	SX-158891	"	1,000
.....	201440	SX-158892	"	4,000
.....	201849	SX-159228	M. R. Rennie	1,000
.....	201850	SX-159229	"	1,000
.....	201851	SX-159230	S. S. Vunck	2,500
.....	201852	SX-159231	"	2,500
.....	202091	SX-159429	J. A. Keim	1,000
.....	202323	SX-119623	M. A. Baskin	10,000
.....	202324	SX-119624	R. G. Krause	700
.....	205509	SX-162401	Dis Perrin	5,000
[fol. 73]				
.....	205636	SX-162514	H. H. Hubbell	2,000
.....	207860	SX-164505	E. M. Herron	1,000
.....	208324	SX-164909	J. R. Nickles	1,000
.....	212401	SX-168581	H. R. Hubbell	2,000
.....	215142	SX-171060	H. J. Felts	7,000
.....	182373	SX-142298	Mrs. S. Kafner	500
.....	194351	SX-152739	Miss C. Keim	1,000
.....	195557	SX-153740	C. W. Lynch	2,000
			Total	$540,700

[fol. 74] EXHIBIT "D" TO PETITION

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation, Defendant

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois:

The plaintiffs, T. H. Clarke, William Sutherland, J. Campbell Burton, Harry Boysek, James P. McGregor, Arthur Young, W. D. McGregor, F. G. Colley, W. W. Nissley, Harry L. Cavanagh, Jr., Edward J. Murname, and Eric Bloomquist, copartners doing business as Arthur Young & Company, some of them residents of the State of Illinois, in the Northern District thereof, and some of them residents of the State of New York, bring this, their Bill of Complaint on their own behalf and on behalf of all other creditors of the defendant, American Bond & Mortgage Company, a corporation, organized and existing under the laws of the State of Maine, and a citizen and resident of said State, and thereupon complain and allege as follows:

First. This is a suit of a civil nature, wherein there is involved a controver-y wholly between Citizens of different states, and wherein the matter and amount in controversy, [fol. 75] exclusive of interest and costs, exceeds the sum or value of Three Thousand Dollars ($3,000.00).

Second. The plaintiffs, T. H. Clarke, J. Campbell Burton, Arthur Young, W. D. McGregor, F. G. Colley, W. W. Nissley and Eric Bloomquist, are each citizens of the State of New York and resident in said state, and the plaintiffs, William Sutherland, Harry Boysek, Harry L. Cavanaugh,

Jr., James P. McGregor, and Edward J. Murname are each citizens of the State of Illinois, and resident in said State, and inhabitants of the Northern District of Illinois.

Third. The defendant was at all times hereinafter mentioned and now is a corporation organized and existing under the laws of the state of Maine and is a citizen and resident of said state, having an office for the transaction of business and transacting and doing business in the City of Augusta, State of Maine.

Fourth. On information and belief, the defendant was incorporated in the year 1910 for the purpose of carrying on a general brokerage business, purchasing, selling and dealing in and with bonds, securities and other evidences of indebtedness and, in general, of carrying on the business of investment bankers in the City of Chicago, State of Illinois and in other States, and has been and is engaged in such business in this district.

Fifth. On information and belief, the defendant in the course of its business has acquired and now owns, among other properties, various bonds, notes and other evidences [fol. 76] of indebtedness secured by mortgages or trust deeds covering real estate or leaseholds in the City of Chicago, State of Illinois, and in other parts of the State of Illinois, and in other States, which said bonds, notes and other evidences of indebtedness constitute a substantial part of the assets of the defendant. Some of said bonds, notes and other evidences of indebtedness are secured by first mortgages or first mortgage trust deeds; some of said bonds, notes or other evidences of indebtedness so secured have been subordinated to other bonds, notes or other evidences of indebtedness outstanding under the same first mortgage or trust deed, and some of said bonds, notes or other evidences of indebtedness are secured by junior mortgages or trust deeds. Defendant also owns equities in real estate resulting from the foreclosure of the mortgages or trust deeds securing such bonds, notes and other evidences of indebtedness, and as the owner and holder of such bonds, notes and other evidences of indebtedness has in many instances made substantial advances, which under the terms of the several trust deeds pursuant to which such advances were made have become additional indebtednesses secured by the terms of the said respective trust deeds.

Sixth. On information and belief, the defendant owns or controls capital stock of a large number of corporations, some of which said corporations are subsid-aries organized for the purpose of carrying on various branches of the business of the defendant, and some of which said corporations are building corporations owning land and the building or buildings situated thereon; some of which said [fol. 77] corporations are doing business in the State of Illinois, and some of which said corporations are doing business in other states.

Seventh. On information and belief, the defendant owns other securities, owns accounts in various banks in this and other districts, owns divers accounts receivable, and owns equities in real estate in the State of Illinois and in other states.

Eighth. The plaintiffs are creditors of the defendant, and the defendant is now justly indebted to the plaintiffs in the sum of Three Thousand One Hundred and Eighty Dollars ($3,180.00) for services rendered by plaintiffs to the defendant at defendant's request, payment of which sum has been demanded by the plaintiffs from the defendant and payment whereof has been refused by the defendant, and said sum is now due and payable and wholly unpaid.

Ninth. On information and belief, the defendant is indebted to general creditors in a sum in excess of Eight Million Dollars ($8,000,000.00), part of which said indebtedness has matured and remains unpaid; and less than Three Million Dollars ($3,000,000.00) of which said indebtedness is secured, which said security is a large part is a pledge of bonds, notes and other evidences of indebtedness owned by said defendant.

Tenth. On information and belief, the defendant is obligated in large sums on commitments entered into in connection with the purchase of bonds or mortgages, said sums to be paid out for the erection of a building or buildings to be financed out of the proceeds of the sale of said bonds or [fol. 78] mortgages, and such payments to be made from time to time in the course of the erection or construction of said building or buildings pursuant to the terms and conditions of such commitments, and the completion of which said buildings, free and clear of liens, has in many instances

been guaranteed by the defendant in connection with the sale by it of the bonds secured thereby. The investing public is and has been for some time interested in investments in stock and as a consequence there is and has been practically no market for bonds, notes and other evidences of indebtedness secured by mortgage or trust deed. Defendant has by reason of said market conditions been unable in many instances to sell all of the bonds of the issues out of the proceeds of the sale of which it was contemplated that the construction of such building or buildings should be financed, and unless the remainder of said bonds can be sold, said building or buildings cannot be completed and will represent a total loss to the defendant and a probable loss to the owners and holders of such of the bonds secured thereby as have heretofore been sold by the defendant.

Eleventh. On information and belief, certain of the creditors of the defendant have brought suit against the defendant on their claims, and other creditors of the defendant are pressing their claims for payment, and the plaintiffs apprehend that such creditors will forthwith bring suit thereon and in divers other manners enforce their respective claims. Such action on the part of such creditors will, as the plain- [fol. 79] tiffs believe, result in judgments, executions and seizures by sheriffs, marshals and other like officers and in enforcing sales of the property of the defendant, and any such action on the part of such creditors will cause great and irreparable injury and loss to the defendant and to its creditors, including the plaintiffs.

Twelfth. On information and belief, that said defendant is solvent; that the properties and assets of the defendant have an aggregate value in excess of the aggregate amount of defendant's indebtedness, but said properties and assets, for the reasons hereinabove and hereinafter set forth, can only be realized upon gradually unless a considerable sacrifice is to be made.

Thirteenth. On information and belief, in many instances in which the bonds, notes or other evidences of indebtedness owned by the defendant are secured by junior mortgages or trust deeds, or have been subordinated to the remaining bonds, notes or other evidences of indebtedness secured by the same mortgage or trust deed, foreclosures have been

instituted or threatened on behalf of the holders of the prior bonds, notes or other evidences of indebtedness; and in order to protect the interests of the defendant and to realize eventually upon such securities, it has become necessary and will from time to time be necessary to advance large sums of money in order to reinstate the mortgages or trust deeds securing said prior bonds, notes or other evidences of indebtedness, and in order to take the necessary steps to secure control of the properties covered by such [fol. 80] mortgages or trust deeds and cause the same to be administered for the best interest of the holders of the bonds, notes and other evidences of indebtedness issued under the mortgages or trust deeds covering such properties. Said situation has been rendered more acute by reason of the fact that in many instances the buildings on the properties securing such mortgages or trust deeds have by reason of renting conditions been renting only partially or at low rates. During a considerable space of time preceding the date hereof little building has been done in the City of Chicago by reason of the fact that the lack of market for the sale of bonds has made the financing of such building operations difficult, and plaintiffs believe that as a result thereof the renting situation will improve and that the real estate securing such bond issues will eventually be restored to its true value, and defendant and its creditors and stockholders will benefit thereby, provided that the necessary funds to prevent the loss thereof in the interim can be procured.

Fourteenth. On information and belief, one of the substantial assets of the defendant is the good-will of its business, and plaintiffs believe that unless the obligations of the defendant can be performed and its indebtedness paid, and its business administered and liquidated in an orderly manner, the value of said good-will will be entirely lost.

Fifteenth. On information and belief, if the property and assets of the defendant should be sold or disposed of at forced sale, they would not bring their true value and might prove to be insufficient to provide in full for the payment of [fol. 81] the indebtedness of the defendant, and if said properties and assets are permitted to be so sold, or if the necessary funds cannot be obtained for the preservation of said property and assets, the creditors of the defendant, in-

cluding the plaintiffs and the defendant and its stockholders, will thereby suffer irreparable injury, damage and loss.

Sixteenth. Any attempt by the plaintiffs to enforce at law the claims of the plaintiffs as general creditors of the defendant will precipitate similar action on the part of other creditors of the defendant which in turn will lead to wasteful strife and controversy, and plaintiffs believe that such strife and controversy can be avoided and the property of the defendant preserved for equitable distribution among those entitled thereto, and that such property can be protected and realized upon and that the commitments and contracts of the defendant can be performed only through the intervention of this Honorable Court and the granting of equitable relief, including the appointment of a receiver or receivers properly empowered to carry on the business of the defendant and borrow the necessary funds to protect and realize upon its said assets, subject to the approval of this Honorable Court. Unless this Honorable Court, in view of the present inability of the defendant to meet its maturing obligations and to properly protect its assets, will deal with the properties of the defendant as a trust fund for the payment of its creditors as their several interests therein shall appear, such properties will be dissipated, wasted and sacrificed and inter-[fol. 82] minable litigation will result, to the great and irreparable damage and injury to the plaintiffs, the other creditors of the defendant and of the defendant itself.

Eighteenth. Inasmuch as the plaintiffs have no adequate remedy at law, but can have relief only in equity, the plaintiffs file this Bill of Complaint on behalf of themselves and of all other creditors of the defendant who shall come in and contribute to the expense of this suit, and the plaintiffs pray for equitable relief as follows:

1. That this Honorable Court administer, all and singular, the property, rights and assets of the defendant and adjudicate, enforce and adjust the rights, liens, equities and claims of all the creditors of said defendant, including the claim of the plaintiffs, as the same may be determined.

2. That in order to preserve and protect the properties and assets of the defendant, and in order that they may be held together and ultimately sold or otherwise disposed

of in the most advantageous manner this Honorable Court forthwith appoint a receiver or receivers of, all and singular, the property and assets of every nature wheresoever situate, held, owned or controlled by the defendant, with full power and authority to take into his or their possession and to hold such property and assets and to continue, manage and operate as a whole the business now being conducted by the defendant with such powers as this Honorable Court may from time to time grant.

3. That said receiver or receivers be authorized and empowered to bring suit for, collect, receive and take into [fol. 83] his or their possesion all the property and assets, real, personal or mixed goods, chattels, credits, rights, claims, equities, books, papers, securities, cash or other property whatsoever and wheresoever situate of the defendant; to institute, prosecute, become a party to, intervene in, compromise or defend suits and actions at law or in equity, or otherwise, either for the recovery, or protection, or maintenance, of any of the property and assets of the defendant as he or they may deem necessary or proper, including the institution and prosecution of such ancillary proceedings in any court or courts of the United States, or of any state, or of any foreign nation, as he or they may deem advisable, and including also any other suits, actions or proceedings at law or in equity, or otherwise, in which the defendant may have any interest as plaintiff, defendant, or otherwise, and including the power to continue any such pending suits, and to defend or otherwise dispose of any such proceedings, suits or actions, to settle or compound or make allowances on any or all debts now due and owing, or which may hereafter be due and owing, to the defendant, as he or they may deem advisable or proper.

4. That said receiver or receivers be authorized and empowered to continue the operation of the business of the defendant, and to take and to employ and discharge and pay the compensation, salaries, and wages of such attorneys, counsel, managers, superintendents, foremen, accountants, bookkeepers, salesmen, agents, laborers, mechanics, workmen and such other employees as may be necessary and incidental to the operation of the business of the [fol. 84] defendant as he or they may deem necessary or

advisable in connection with the custody, control, preservation, operation and management of the properties and business of the defendant; to continue existing agreements, arrangements, commitments and relations of the defendant to and with other corporations, firms, and individuals to the extent that he or they may deem it advisable until the further order of this Court; to perform the existing contracts of the defendant to the extent that performance thereof may seem to him or them desirable and profitable; to enter into and perform other contracts in the regular course or conduct of the business of the defendant, or otherwise; to purchase for cash or on credit supplies, equipment, material or other property as may be advisable in connection with the administration of the assets of the defendant; to pay any and all claims for services, wages, labor, supplies, materials, equipment, or otherwise, that may be entitled to priority or which may constitute a lien upon any of the properties of the defendant; to pay the salaries and wages of agents, employees, laborers and servants of the defendant accrued or to accrue, so far as said receiver or receivers may deem necessary or expedient to secure the continuation of the services of such agents, employees, laborers and workmen; to advance moneys of the defendant from time to time to any or all of the corporations owned or controlled by the defendant, or any corporation in which the defendant may have an interest or which may be indebted to the defendant, so far as it may be deemed necessary or advisable by said receiver or receivers in order to protect or preserve the value of the investment of the defend-
[fol. 85] ant in such corporations or the value of the indebtedness of such corporations to the defendant; to protect and preserve the interest of the defendant in any properties covered by the mortgages or trust deeds securing bonds, notes, or other evidences of indebtedness owned by the defendant; to protect such properties against foreclosure in the interest of the owners of bonds, notes or other evidences of indebtedness prior in lien to the bonds, notes or other evidences of indebtedness owned by the defendant; to purchase such properties at any sales held in such foreclosure proceedings, and to redeem such properties from sale in any such foreclosure proceedings; to pay any taxes, assessments, or other governmental charges prior in lien

to the lien of the bonds, notes or other evidences of indebtedness owned by said defendant and to redeem such properties from sale for such taxes, assessments or other governmental charges; to protect the equities owned by the defendant in real estate and to pay indebtedness accrued and which may accrue from time to time on account of bonds, notes or other evidences of indebtedness secured by a mortgage thereon, and on account of taxes, assessments and other governmental charges against such premises; to purchase such properties at sale in foreclosure or other proceedings and to redeem such properties from sale in foreclosure or other proceedings; to manage and operate the buildings on properties owned by the defendant; to incur and discharge any and all expenses which he or they may deem necessary or advisable for any of said properties; to borrow money on receiver's certificates, or otherwise, for any of [fol. 86] the properties hereinabove enumerated and to incur such expenses as he or they may deem necessary or advisable in connection therewith, and to have the usual powers of receivers in like cases; all until the further order of this court in the premises.

5. That in managing and operating the properties and business of the defendant, said receiver or receivers be authorized to act in association with any ancillary receiver or receivers who may be appointed by any other court to take possession of and operate any other property of assets of the defendant situated outside the territorial jurisdiction of this Court, and to take and to transfer and consent to the transfer from time to time of any moneys and credits to or from the territorial jurisdiction of this Court and such ancillary jurisdiction or jurisdictions to the extent that may from time to time be reasonably required, and to co-operate to the fullest extent with any such ancillary receiver or receivers in managing and operating the business and properties of the defendant.

6. That all creditors and stockholders of the defendant and all other persons, firms and corporations be enjoined from instituting or prosecuting or continuing the prosecution of any action, suits or proceedings at law or in equity, or under any statute, against the defendant, and from levying any attachments, executions, or other process upon or

against any of the properties of the defendant, or from taking or attempting to take into their possession any part of the property of the defendant, and from doing any act whatsoever to interfere with the possession and manage-[fol. 87] ment by said receiver or receivers of the properties and business of the defendant, or in any way interfering with said receiver or receivers in discharge of their duties, or interfering in any way with the administration and disposition in this suit of the avails and properties of the defendant.

7. That all creditors of the defendant and all persons interested in the defendant be permitted to intervene in and become parties to this suit if and as permitted and authorized so to do by this Honorable Court.

8. That a writ or writs of injunction issue out of and under the seal of this Honorable Court, to be issued by one of Your Honors, directing, enjoining and restraining the defendant and officers, superintendents, managers, attorneys, agents and employees of the defendant and all other persons, firms and corporations from interfering with, transferring, selling or disposing of any of the property or assets or income of the defendant, or from taking possession of or attaching or levying upon or attempting to call or in any manner dispose of any part of the property of said defendant.

9. That at such time or times as may be found just and proper the properties and assets of the defendant may be ordered to be sold, in whole or in part, in such manner and upon such terms and conditions as this Honorable Court shall deem just and equitable, and that any such order of sale shall make proper and suitable provisions for the preservation of all equities, rights, priorities, claims and liens of the creditors of the defendant, and shall provide [fol. 88] for the sale of the properties of the defendant subject to or free and clear from any and all liens and encumbrances, in whole or in part, in such manner and upon such terms as this Honorable Court may direct; and that the proceeds of any such sale be distributed among those entitled thereto as this Honorable Court shall adjudicate, and that in case of any sale herein of the property of the defendant it may be directed to make, execute and deliver

to the accepted purchaser or purchasers upon any such sale such releases, bills of sale and conveyances as may be necessary or proper to vest in such purchaser or purchasers the title to all such several properties; or that the properties of the defendant may be returned to the defendant if and to the extent that proper provision shall be made for the claims of the plaintiffs and other creditors of the defendant, and that plaintiffs may have such other and different relief as to this Honorable Court may seem proper and as may be necessary fully to protect and enforce the rights and equities of the plaintiffs and of all the other creditors of the defendant.

10. That a writ of subpœna may be granted unto the plaintiffs, issued out of and under the seal of this Honorable Court, and directed to the defendant, therein and thereby requiring the defendant to appear before this Honorable Court on a certain day then and there full, true and direct and perfect answer to make to all and singular in the premises (but not under oath, answer under oath being hereby expressly waived) and to further perform and abide by such orders, directions and decrees as may be made against it in the premises and as shall seem proper and [fol. 89] right in equity and good conscience.

And the plaintiffs will ever pray, et cetera.

T. H. Clarke, William Sutherland, J. Campbell Burton, Harry Boyack, James P. McGregor, Arthur Young, W. D. McGregor, F. C. Colley, W. W. Nissley, Harry L. Cavanagh, Jr., Edward J. Murname, and Eric Bloomquist, Copartners as Aforesaid, by Harry L. Cavanagh, Jr., J. Arthur Miller and Townley, Wild, Campbell & Clark, Solicitors for Plaintiffs.

[fol. 90] United States of America,
Northern District of Illinois,
Eastern Division:

Harry L. Cavanagh, Jr., being first duly sworn, upon oath deposes and says that he is the duly authorized agent in this behalf of plaintiffs in the above entitled cause; that he has read the foregoing bill of complaint by him subscribed for and on behalf of the plaintiffs, and knows the contents thereof; that he has knowledge of the facts, and

that the matters and things therein alleged are true in substance and in fact, except as to the matters therein stated to be alleged upon information and belief, and as to those matters affiant states that he believes the same to be true.

The grounds of affiant's belief as to all matters in said bill of complaint not stated upon his knowledge are the following:

Books, papers and documents examined by the affiant and statements made by representatives of the defendant.

Harry L. Cavanagh, Jr.

Subscribed and sworn to before me this 21st day of May, 1931. Catherine Newton, Notary Public.

[fol. 91] EXHIBIT "E" TO PETITION

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation, Defendant

The Answer of American Bond & Mortgage Company, a Corporation, Defendant, to the Bill of Complaint of T. H. Clarke, et al., Plaintiffs

And this defendant answering admits the allegations in said bill of complaint contained, and admits that it would be to the best interest for the purpose of protecting and preserving the respective rights and equities of the plaintiffs and of all other creditors of the defendant, and for the purpose of preserving the assets, property and business of the defendant, that a receiver be appointed in the above entitled cause.

And therefore this defendant consents that an order may be entered by this Court appointing a receiver, in accordance with the prayer contained in the bill of complaint filed herein.

American Bond & Mortgage Company, by H. E. Ambler, Its Duly Authorized Agent. H. E. Ambler, Solicitors for American Bond & Mortgage Company.

[fol. 32] EXHIBIT "F" TO PETITION

UNITED STATES OF AMERICA,
Northern Division of Illinois,
Eastern Division, ss:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation, Defendant

ORDER APPOINTING RECEIVER

This cause coming on to be heard on the bill of complaint of the complainants entered herein, and upon the answer of the defendant admitting the allegations in said bill and consenting to the relief prayed therein, and it appearing to the Court that the appointment of a receiver as prayed for in said bill of complaint is desirable, and the Court being fully advised in the premises,

It is therefore ordered, adjudged, and decreed as follows:

(1) That the defendant, though appearing to own properties and assets which at a fair valuation exceed its liabilities, is now unable to meet its immediate maturing obligations and will so continue for a considerable time; that the complainants are entitled to the relief hereby granted; that they have no adequate remedy save through the granting of

this decree; that it is necessary for the protection and pres-[fol. 93] ervation of the respective rights and equities of the complainants and of all other creditors of the defendant that the assets, property and business of the defendant be preserved and administered as an entirety through a Receiver to be appointed herein, and that it is necessary that a Receiver of the assets, property and business of the defendant be appointed forthwith.

(2) That the Chicago Title and Trust Company be, and it hereby is appointed Receiver of the above named American Bond & Mortgage Company, and of all of its property, rights and assets, of every nature and wheresoever situated, owned or controlled by the defendant, or in which it has an interest, with full power and authority to take into its possession and to hold such property and assets, and to continue to manage and operate as a whole the business now being conducted by the defendant.

(3) That the said Receiver be authorized and empowered to bring suit for, collect, receive, and take into its possession all the property and assets, real, personal or mixed, goods, chattels, credits, rights claims and equities, books, papers, securities, cash and other property whatsoever and wheresoever situate of the defendant; to institute, prosecute, become a party to, intervene in, compromise or defend suits and actions at law or in equity, or otherwise, either for the recovery, or protection or maintenance, of any of the property and assets of the defendant as said Receiver may deem necessary and proper, including the institution and prosecution of such ancillary proceedings in any court or courts of the United States or of any state, [fol. 94] or of any foreign nation, as said Receiver may deem advisable, and including also any other suits, actions, or proceedings at law or in equity, or otherwise, in which the defendant may have any interest as complainant, defendant, or otherwise, and including the power to continue any such pending suits, and to defend or otherwise dispose of any such proceedings, suits or actions, to settle or compound or make allowance on any or all debts now due and owing, or which may hereafter be due and owing to the defendant, as said Receiver may deem advisable or proper.

(4) That said Receiver be authorized and empowered to continue the operation of the business of the defendant, and to take and to employ and discharge and pay the compensation, salaries and wages of such attorneys, counsel, managers, superintendents, foremen, accountants, bookkeepers, salesmen, agents, laborers, mechanics, workmen, and such other employes as may be necessary and incidental to the operation of the business of the defendant as said Receiver may deem necessary or advisable in connection with the custody, control, preservation, operation and management of the properties and business of the defendant; to continue existing agreements, arrangements, commitments and relations of the defendant to and with other corporations, firms and individuals to the extent that said Receiver may deem advisable until the further order of this court; to perform the existing contracts of the defendant to the extent that performance thereof may seem to said Receiver desirable and profitable; to enter into and perform other contracts in the regular course or conduct of the business of the defendant, or otherwise; to purchase for cash or on credit supplies, equipment, material or other [fol. 95] property as may be advisable in connection with the administration of the assets of the defendant; to pay any and all claims, for services, wages, labor, supplies, materials, equipment, or otherwise, that may be entitled to priority or which may constitute a lien upon any of the properties of the defendant; to pay the salaries and wages of agents, employes, laborers and servants of the defendant accrued or to accrue so far as said Receiver may deem necessary or expedient to secure the continuation of the services of such agents, employes, laborers and workmen; to advance moneys of the defendant from time to time to any or all of the corporations owned or controlled by the defendant, or any corporation in which the defendant may have an interest or which may be indebted to the defendant, so far as it may be deemed necessary or advisable by said Receiver in order to protect or preserve the value of the investment of the defendant in such corporation or the value of the indebtedness of such corporation to the defendant; to protect and preserve the interest of the defendant in any properties covered by the mortgages or trust deeds securing

bonds, notes, or other evidence of indebtedenss owned by the defendant; to protect such properties against foreclosure in the interest of the owners of bonds, notes or other evidences of indebtedness prior in lien to the bonds, notes, or other evidences of indebtedness owned by the defendant; to purchase such properties at any sales held in such foreclosure proceedings, and to redeem such properties from sale in any such foreclosure proceedings; to pay any taxes, assessments, or other governmental charges prior in lien to the lien of the bonds, notes, or other evi- [fol. 96] dences of indebtedness owned by said defendant, and to redeem such properties from sale for such taxes, assessments or other governmental charges; to protect the equities owned by the defendant in real estate and to pay indebtedness accrued and which may accrue from time to time on account of bonds, notes or other evidences of indebtedness secured by a mortgage thereon, and on account of taxes, assessments and other governmental charges against such premises; to purchase such properties at sale in foreclosure or other proceedings and to redeem such properties from sale in foreclosure or other proceedings; to manage and operate the buildings on properties owned by the defendant; to incur and discharge any and all expenses which it, said Receiver, may deem necessary or advisable for any of said properties; to borrow money on Receiver's certificates, or otherwise, for any of the properties hereinabove enumerated, and to incur such expenses as said receiver may deem necessary or advisable in connection therewith, and to have the usual powers of Receivers in like cases; all until the further order of this Court in the premises.

(5) That in managing and operating the properties and business of the defendant, said Receiver be authorized to act in association with any ancillary receiver or receivers who may be appointed by any other court to take possession of and operate any other property or assets of the defendant situated outside the territorial jurisdiction of this Court and to take and to transfer and consent to the transfer from time to time of any moneys and creditors to or from the territorial jurisdiction of this Court and such [fol. 97] ancillary jurisdiction or jurisdictions to the extent that may from time to time be reasonably required, and to

co-operate to the fullest extent with any such ancillary receiver in managing and operating the business and properties of the defendant.

(6) That all creditors and stockholders of the defendant and all other persons, firms and corporations are hereby enjoined from instituting or prosecuting or continuing the prosecution of any actions, suits or other proceedings at law or in equity, or under any statute, against the defendant, and from levying any attachments, executions or other process upon or against any of the properties of the defendant, or from taking or attempting to take into their possession any part of the property of the defendant, and from doing any act whatsoever to interfere with the possession and management by said Receiver of the properties and business of the defendant, or in any way interfering with said Receiver in the discharge of its duties, or interfering in any way with the administration and disposition in this suit of the avails and properties of the defendant.

(7) That the defendant and its officers, superintendents, managers, agents, and employes and all other persons, firms and corporations are hereby enjoined from interfering with, transferring, selling or disposing of any property or assets or income of the defendant, or from taking possession, or attaching or levying upon or attempting to sell or in any manner dispose of any part of the property or assets of said defendant.

[fol. 98] (8) That Chicago Title and Trust Company, as Receiver, file forthwith with the Clerk of this Court its bond as receiver in the penal sum of ten thousand dollars, with surety or sureties to be approved by this Court, conditioned that it will well and truly perform the duties of its office, and will properly account for any and all moneys, assets and properties which may come into its hands and will abide by and perform all things which it may be directed to do herein, subject to the direction of this Court.

James H. Wilkerson, District Judge.

7:45 A. M. Chicago Daylight Saving time May 22, 1931.

[fol. 99] EXHIBIT "G" TO PETITION

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Defendant

Order Appointing Coeval Receiver

This matter coming on to be heard upon the petition of the plaintiffs in the above entitled cause and it appearing to the court that the appointment of a coeval receiver with the Chicago Title & Trust Company heretofore appointed, is to the best interest of the defendant corporation, its stockholders and creditors, and the court being fully advised in the premises,

It is therefore ordered, adjudged, and decreed as follows:

That Arthur W. Draper, of Chicago, Illinois, be and he is hereby appointed receiver of the above named American Bond and Mortgage Company, and of all of its property, rights and assets, of every nature and wheresoever situate, owned or controlled by the defendant, or in which it has an interest, with full power and authority to take into his possession and to hold such property and assets, and to continue to manage and operate as a whole the business now conducted by the defendant.

That the said Arthur W. Draper be and he is hereby appointed coeval receiver with the Chicago Title and Trust [fol. 100] Company and shall be coeval and co-extensive with those of the Chicago Title and Trust Company, as set forth in the order entered by this Court on the 22nd day of May, A. D. 1931, appointing said Chicago Title and Trust Company as receiver herein.

That Arthur W. Draper as receiver, file forthwith with the Clerk of this court his bond as receiver in the penal sum of ten thousand dollars, with surety or sureties to be approved by this Court, conditioned that he will well and truly perform the duties of his office, and will properly account

for any and all moneys, assets and properties which may come into his hands, and will abide by and perform all things which he may be directed to do herein, subject to the directions of this Court.

James H. Wilkerson, District Judge.

[fol. 101] EXHIBIT "G-1" TO PETITION

Annual Report

(Use typewriter in making this report)

To William J. Stratton, Secretary of State of the State of Illinois:

Report of American Bond and Mortgage Company, organized under the laws of the State of Maine, as required under an Act entitled "An Act in relation to corporations for pecuniary profit," approved June 28, 1919, in force July 1, 1919, and all acts amendatory thereof:

1. State your name and official position with the corporation (whether president, vice-president, secretary, assistant secretary, treasurer, receiver, assignee or trustee). Harold A. Moore, Vice-President.

2. The location of the principal business office of the corporation in the State of Illinois is at No. 127 N. Dearborn Street, in the City of Chicago, County of Cook, and the names and residences of the officers and directors of said corporation are as follows:

Names of Officers and Directors

Name	Office	Residence, number and street, City, State
Arthur W. Draper	President	127 N. Dearborn Street, Chicago, Illinois
H. E. Ambler	Secretary	127 N. Dearborn Street, Chicago, Illinois
Harold A. Moore	Treasurer, Director.	127 N. Dearborn Street, Chicago, Illinois
Arthur W. Draper	Director.	Same as above.
Harold A. Moore	Director.	Same as above.
H. E. Ambler	Director. Director.	Same as above.

[fol. 102] NOTICE.—Must give officers and show management of corporation is vested in at least three Directors.

3. Has the corporation acquired title to any real estate in securing any debt or liability due it? Ans. No.

4. Give a description of such property, if any has been acquired, and the date of the acquisition and disposal of such property? None.

5. Has the corporation entered into any illegal pool, trust, agreement, combination, confederation or understanding in restraint of trade in contravention of any Act of this State concerning such matters? Ans. No.

6. State briefly the nature of business in which the corporation is actively engaged under its charter at the present time. Dealer in securities.

(In handwriting:) A. C. 8,500,000
Ill. 4,000,000
Iss. 8,500,000

(Page 2 of Report)

7. The amount of authorized stock of the corporation having a par value is: Common, $1,500,000.00; Preferred, $7,000,000.00.

The number of shares of authorized capital stock of the corporation having no par value is: Common shares, None; Preferred shares, None.

8. The total amount of capital stock issued is: Capital stock having a par value: Common, $1,472,133.34; Preferred, $6,871,279.74.

[fol. 103] The value of the consideration received or to be received by the corporation for such capital stock having a par value is: Common, $1,472,133.34; Preferred, $6,871,279.74.

The value of the consideration actually received by the corporation for such stock is: Common, $1,472,133.34; Preferred, $6,871,279.74.

The number of shares of the capital stock of the corporation having no par value issued is: Common shares, None; Preferred shares, None.

The amount of the consideration received or to be received by the corporation for such shares having no par value is: Common, None; Preferred, None.

The amount of the consideration actually received by the corporation for such shares having no par value is: Common, None; Preferred, None.

*9. Does the corporation wish to pay a franchise tax based upon its entire issued capital stock? Ans. No.

*10. In the event that the corporation is assessed a franchise tax upon its entire issued capitalization, will it be paid promptly? Ans. No.

[fol. 104] *11. Give total value of all the property of the corporation everywhere. $15,832,217.83.

*12. Give total value of all the property of the corporation located in Illinois. $——.

(Page 3 of Report)

13. Give the location of the principal places of business of the corporation in each State and the amount of business transacted through each, last year. No business done in 1930.

(See instructions on back before answering this question and be sure to give the exact information requested.)

14. State the total business of the corporation transacted everywhere during the past year. Ans. $None.

15. State the total business of the corporation for the past year transacted by it at or from places of business in the State of Illinois. Ans. $None.

(See instructions on back before answering this question and be sure to give the exact information requested.)

16. From what office are the affairs of the corporation managed? Ans. Chicago Office, 127 North Dearborn Street, Chicago, Ill.

17. To what office or offices are all contracts with the corporation forwarded for final acceptance? Ans. Chicago office.

18. Is the corporation actually transacting business at the present time in the State where it was incorporated? Ans. No.

[fol. 105] 19. At what office or offices are directors and stockholders meetings held? Ans. Directors, 127 North Dearborn Street, Chicago, Ill.; Stockholders, Augusta, Maine.

(Back)

In witness whereof I have hereunto set my hand and caused the seal of said corporation to be affixed this 17th day of February A. D. 1931.

Harold A. Moore, Vice-President. (Corporate Seal.)

STATE OF ILLINOIS,
Cook County, ss:

I, Harold M. Moore, being duly sworn, declare on oath that I am Vice President of the corporation mentioned in the foregoing report, and that all statements therein made are true.

Harold A. Moore.

Subscribed and sworn to before me this 17th day of February, A. D. 1931. Iva G. Brenneman, Notary Public. (Notarial Seal.)

Special Instructions

Under decisions of the Supreme Court of the United States it would appear the State is entitled to have credit for all business transacted by a corporation at or from a place of business in this State, regardless of the point from which or to which the goods may be shipped and your answers to interrogatories 13 and 15 should include all such business.

[fol. 106] *Corporations having all their property and business in this State are required under the Statute to pay upon their entire issued capital stock and should answer paragraphs 9 and 10 in the affirmative, as this will relieve them of the expense and trouble of giving the information called for in paragraphs 11 to 19 inclusive, which would be of no benefit to either the corporation or the State. Other corporations should give the detailed information called for in paragraphs 11 to 19 inclusive, in order that the secretary of State may be able to ascertain the corfect amount of franchise tax and initial fees due from them.

Book accounts, stocks and bonds should be reported as of the situs where they are kept.

§ 102 * * * The Secretary of State shall on or before the 15th day of January of each year forward to each cor-

poration of record in his office a copy of the forms to be used in making the report specified in this Act, but the failure to send or to receive such forms shall not relieve the corporation from the duty of making such report.

§ 151. If any officer of a corporation required by this Act to make a report under oath to the Secretary of State, shall in such report wilfully and knowingly make any false statement, he shall be guilty of perjury.

§ 153. Any corporation failing to file its annual report within the time required by this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars.

[fol. 107] Annual report of American Bond and Mortgage Company, located at 127 N. Dearborn Street, Chicago, Ill. Box 89. File 777. Filed Feb. 19, 1931. William J. Stratton, Secy. of State. No. Filing Fee Required.

[fol. 108] EXHIBIT "H" TO PETITION

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE

In the Matter of AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, Alleged Bankrupt

Petition for Involuntary Bankruptcy

To the Honorable Judge of the District Court of the United States for the District of Maine:

The petition of Royal Indemnity Company, Lucy G. Adamson, Frances C. Losee, Dr. M. A. Losee, Parkes D. Wendell, Jesse H. Owens, Agnes E. Larkin, Daniel Larkin, Newell Becker, Ralph W. Eldredge, J. L. Hone, Cora Vunck, Charles M. Winchester, William Lawrie, Minnie C. Bame, S. J. Bennett and Lloyd S. Cheney respectfully shows, upon information and belief:

1. The American Bond & Mortgage Company, Incorporated (hereinafter referred to as the American Bond) is a corporation duly organized under the laws of the State

of Maine, having an office and place of business in Augusta, Kennebec County, Maine.

2. For the greater portion of the six months next immediately preceding the date of the filing of this petition, the American Bond had its principal place of business and its domicile, in the State of Maine.

[fol. 109] 3. The American Bond is not a municipal, railroad, insurance or banking corporation but is and always has been, engaged as a dealer and broker in real estate securities and in other securities.

4. The said alleged bankrupt is insolvent and owes debts in the amount of upwards of Six Million dollars ($6,000,000).

5. Your petitioners are creditors of the said alleged bankrupt and have provable claims against it, amounting in the aggregate (in excess of securities held by them) to upwards of Five hundred thousand dollars ($500,000).

6. Your petitioners are not entitled to priority upon their said claims against the bankrupt, within the meaning of the Bankruptcy Act of 1898 (as amended from time to time), nor have your petitioners received a preference within the meaning of the said Act.

7. The nature and amount of your petitioners' claims are as follows:

(a) The Claim of the Royal Indemnity Company

Prior to February 16, 1926 the American Bond was engaged in the business of marketing mortgage securities on real property. It wanted to have better facilities for the marketing of such securities. It desired to secure the guarantee of the Royal Indemnity Company, of the payment of the principal of said securities and the interest thereon. It made application to the Royal Indemnity Company for [fol. 110] the execution of bonds guaranteeing the payment of such principal and interest. The Royal Indemnity Company agreed to issue such guarantees upon certain specified conditions.

One of the important conditions specified was that "whenever the Company (Royal Indemnity Company) elects to,

and does issue its bond or bonds, the substance of which shall guarantee the payment of the principal and interest of any mortgage securities which the Insured (American Bond) may market, that the Insured will immediately deliver to the Company, acceptable negotiable securities to the value of five (5%) percent, of the aggregate par or face value of all of the mortgage securities which the Company shall have guaranteed."

Another important condition specified was that "in the event that the market value of the securities so deposited shall not at any time be equal to the aforesaid percentage, or should the fund created by the deposit of the aforesaid securities become depleted or exhausted by reason of the payment by the Company of any loss under any bond or bonds which it may issue, then, upon demand, the Insured will deliver to the Company further such securities for the like purpose or (at the option of the Insured) a cash payment so that the market value of the said securities and/or cash shall always be equal to five (5%) percent of the aggregate or par value of all the mortgage securities then outstanding, which the Company shall have guaranteed."

A copy of the said agreement is hereto annexed and marked Exhibit "A".

The Royal Indemnity Company elected to and did issue its bonds of guarantee in pursuance of the said agreement [fol. 111] of February 16, 1926, the substance of which guaranteed the payment of the principal and interest of certain mortgage securities which the American Bond marketed. Those bonds so marketed and still outstanding aggregate Five hundred forty thousand seven hundred dollars ($540,700).

The Royal Indemnity Company, however, on its information and belief alleges that a portion of said Five hundred forty thousand seven hundred dollars ($540,700) bonds so guaranteed by it, but not exceeding Twenty-five thousand dollars ($25,000) thereof, have been bought up by the American Bond, and may be now still held by it, and by reason of the matters herein alleged the Royal Indemnity Company denies any responsibility to the American Bond under said guarantees on any such bonds so held by American Bond.

A copy of the form of bond in use is hereto annexed and marked Exhibit "B".

A list of the bonds so guaranteed by the Royal Indemnity Company and still outstanding is hereto annexed and marked Exhibit "C".

In pursuance of the said agreement of February 16, 1926 the American Bond delivered to the Royal Indemnity Company acceptable negotiable securities of the market value, at the time, of five (5%) percent of the aggregate par or face value of all of the mortgage securities so guaranteed by the Royal Indemnity Company.

The market value of the securities so deposited by the American Bond with the Royal Indemnity Company has very greatly depreciated and the fund created by the deposit of the aforesaid securities has become depleted by [fol. 112] reason of the payment by the Royal Indemnity Company of losses under the bonds so issued by it guaranteeing the payment of securities so marketed by the American Bond; and the market value of the securities now on deposit and the cash on hand, with the Royal Indemnity Company is not over Four thousand dollars ($4,000) and is not equal to the aforesaid percentage of five (5%) percent of the aggregate par or face value of all of the mortgage securities guaranteed by the Royal Indemnity Company and still outstanding; and the shortage in deposit by virtue of the depreciation in such securities and by virtue of such depletion by reason of the payment therefrom of such losses, exceeds Twenty-three thousand dollars ($23,000) to date without taking into consideration the interest which the Royal Indemnity Company will be required to pay from time to time on defaulted issues, of which there are many, and without taking into consideration other losses on payments already made to bondholders on defaulted issues but not yet reimbursed to said Royal Indemnity Company from said fund.

The Royal Indemnity Company, to wit, on April 5, 1930, April 9, 1930, and May 3, 1930, duly demanded of the American Bond that it deliver to it further securities or cash for the like purpose of partially securing the Royal Indemnity

Company against loss by reason of the issuance of such bonds guaranteeing the payment of securities so marketed by the American Bond under such guarantees by the Royal Indemnity Company, so that the market value of such securities and/or cash should equal five (5%) percent of the aggregate par or face value of all of the mortgage [fol. 113] securities guaranteed as aforesaid by the Royal Indemnity Company and still outstanding; but the American Bond has refused and still refuses to do so, and there is now already due, owing and unpaid from the American Bond to the Royal Indemnity Company because of such depreciation in securities and because of such depletion, a sum in excess of Twenty-three thousand dollars ($23,000) to date. The bonds so guaranteed and still outstanding aggregate Five hundred forty thousand seven hundred dollars ($540,700).

The Royal Indemnity Company has fully performed all of the terms and conditions of the said agreement on its part to be performed but the American Bond has refused and still refuses to comply with the aforesaid demand of the Royal Indemnity Company that the American Bond deliver further securities or cash and has otherwise failed to carry out the provisions of the said agreement on the part of the American Bond to be performed.

In addition to the said specific claim, the American Bond is also indebted to the Royal Indemnity Company for inducing the Royal Indemnity Company to guarantee large numbers of such first mortgage bonds when, to the knowledge of the American Bond, defaults had already been made and were still continuing, in the payment of taxes, in very large amounts, on the real estate, on which real estate were the mortgages securing such bonds which the American Bond had asked the Royal Indemnity Company to guarantee; and for suppressing and concealing from the Royal Indemnity Company the fact that such defaults in the payment of taxes on such properties had continued to the time of the guarantee and that [fol. 114] the security in each instance had been largely impaired by such default; and by falsely representing that such bonds and mortgages were in good standing and that no default thereunder had occurred, and by otherwise making false and fraudulent representations with regard to

such securities all of which the American Bond knew to be false and which representations were made to induce the execution of such guarantees by the Royal Indemnity Company and which representations were material and were relied upon and believed by the Royal Indemnity Company and did induce the Royal Indemnity Company to give such guarantees; and is also indebted to said Royal Indemnity Company for having by false and fraudulent representations in writing of its own assets and liabilities, induced the said Royal Indemnity Company to enter into said agreement, Exhibit A hereof, and to guarantee over $500,000 par value of such first mortgage bonds.

Among the false and fraudulent representations as to its own assets so made to this petitioner, was the showing on its financial statement of June 30, 1925 as a "current asset" of several hundred thousand dollars of defaulted bonds and coupons at the full par value thereof. At that time none of such defaulted bonds and coupons were worth or could have been liquidated at more than fifty (50%) percent of their par value. Those defaulted bonds and coupons had been kept alive by the American Bond by its purchase of those bonds and coupons for its own account after default thereon. The American Bond had paid those defaulting bonds and coupons, after maturity, out of its own funds, in an effort to justify the statement publicly made by it to all investors in its securities that it had never shown [fol. 115] a loss to any investor. The American Bond continued for several years after the agreement between it and the Royal Indemnity Company, dated February 16, 1926, to pay such maturing bonds and coupons notwithstanding the fact that it did not receive the funds with which to do so, from the borrowing corporations, that is, from the owners of the buildings upon which these first mortgage bonds had been issued.

The American Bond had hoped that by thus paying the maturing bonds and coupons out of its own treasury instead of out of funds supplied to it by the owning corporation, to restore the properties in question to a satisfactory earning condition, but the situation became progressively worse for the reason that the American Bond failed to take action looking to the foreclosure of the mortgages on the properties in question or any other action looking to the realization of

such frozen assets, with the result that the item of several hundred thousand dollars as of June 30, 1925 grew to in excess of $5,000,000 in 1928 and the item of $5,000,000 of defaulted bonds and coupons and other equities in properties covered by such defaulted bonds represented a realizable value of only about one-half thereof.

The subterfuge of advancing the moneys to prevent defaults, out of its own treasury, and then setting up the item as "bonds and coupons receivable" was for the purpose of lulling the holders of other bonds on the properties in question, into security and for the purpose of allowing prospective purchasers of bonds on the issues in question and upon other issues, to believe that this form of investment was sound and safe.

[fol. 116] Moreover, the disclosure by the American Bond of the true situation would have prevent- it from selling to its customers bonds of a later maturity of such defaulted issues which it was thus obliged to carry, and would have been apt to affect adversely its sales of other securities floated by it.

And this petitioner will, in due course, present such additional claims in proving its claims in the bankruptcy proceeding, after adjudication.

[fol. 117] (b) The Claim of Lucy G. Adamson

On or about March 21, 1925 your petitioner, Lucy G. Adamson, through her husband, Samuel J. Adamson, as her agent, purchased from the American Bond certificate #7523 for 50 shares of the Cumulative 7% Preferred Stock of the American Bond owned by it. The certificate is dated March 21, 1925 and was delivered on or about that day to your petitioner's husband for her by Meredith J. Roberts, Department Sales Manager for and on behalf of the American Bond.

At the time of the purchase of the said certificate your petitioner paid for the same, through her said husband, to the American Bond, the sum of $5,000. Payment was made to the said Meredith J. Roberts for and on behalf of the American Bond.

At the time and as a part of the said purchase the said Meredith J. Roberts, acting on behalf of said American Bond, delivered to your petitioner's said husband for her

its certain agreement in writing, of which the following is a true and correct copy:

"March 21, 1925.

"In consideration of your having this day purchased fifty shares of American Bond & Mortgage Company 7% Cumulative Preferred Stock, we hereby agree to effect an exchange of this stock for first mortgage bonds on completed New York City buildings at your option.

Yours very truly, American Bond & Mortgage Company, Inc. (Signed) Meredith J. Roberts."

[fol. 118] The said Meredith J. Roberts was duly authorized to make, execute and deliver the said agreement on behalf of the American Bond. The said Meredith J. Roberts made it a practice to execute such agreements on behalf of the American Bond and his executions were ratified and approved by the American Bond and acted upon by it.

Thereafter, to wit: on or about the 15th day of July, 1929 your petitioner, in pursuance of the option contained in the said agreement of March 21, 1925, through her said husband, demanded of the American Bond, that it exchange the said certificate for first mortgage bonds on completed New York City buildings. The American Bond refused to exchange the said certificate for such first mortgage bonds on completed New York City buildings and has ever since refused and still refuses to do so.

The American Bond is now hopelessly bankrupt and its 7% Cumulative Preferred Stock is utterly worthless and your petitioner has sustained damages because of the refusal of the American Bond to so exchange the said certificate for first mortgage bonds on completed New York City buildings, to the amount of $5,000 and interest thereon at the rate of 6% per annum from July, 1929.

It was the policy of the American Bond to permit its Sales Managers and Department Sales Managers, to execute guarantees of repurchase and exchange of securities and also guarantees of the completion of properties, and a very considerable amount of such guarantees were executed by such Sales Manager and Department Sales Managers and some of such guarantees are still outstanding, the balance having been recognized by the American Bond and acted upon by it.

[fol. 119] (c) and (d) The claims of Francis C. Losee and Dr. M. A. Losee, as Joint Tenants with Right of Survivorship and not as Tenants in Common

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. 8082 in the amount of $1,000 wherein, for value received, it promised to pay the said sum of $1,000 on March 1, 1937.

These petitioners paid to said American Bond for said debenture bond, the sum of $1,000 to wit, on or about the 1st day of October, 1927. A copy of one of said debenture bonds, all of which are in the same form, and a copy of the trust indenture therein referred to, are annexed to this petition marked respectively Exhibits D and E and are hereby made parts of this petition.

These petitioners' said bond was duly authenticated at the time of the purchase thereof by indorsement thereon by the Chicago Title & Trust Co. as required by its terms and is bond No. 8082 and the certificate therein is No. 18353.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bond was one of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

[fol. 120] The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bond No. 8082 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioners, who from their said purchase in October, 1927 have ever been and now are the owners and holders of said bonds and coupons, which are not secured, and these petitioners hold no security for the said indebtedness to these petitioners of the said alleged bankrupt.

[fol. 121] (e) The Claim of Parkes D. Wendell

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. 8089 in the amount of $1,000 wherein, for value received, it promised to pay the said sum of $1,000 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bond, the sum of $1,000 to wit, on the 28th day of September, 1927.

This petitioner's said bond was duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and is bond No. 8089 and the certificate therein is No. 18353.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bond was one of duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of

the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon [fol. 122] the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bond No. 8089 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in September, 1927 has ever been and now is the owner and holder of said bond and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 123] (f) The Claim of Jesse H. Owens

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. 8005 in the amount of $1,000 wherein, for value received, it promised to pay the said sum of $1,000 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bond, the sum of $1,000 to wit, on or about the 15th day of July, 1927.

This petitioner's said bond was duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and is bond No. 8005 and the certificate therein is No. 18353.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The

said bond was one of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon the [fol. 124] conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds and has not paid any interest thereon since that date.

No part of the said bond No. 8005 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in July, 1927 has ever been and now is the owner and holder of said bond and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 125] (g) The Claim of Agnes E. Larkin

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. 4627 in the amount of $500 wherein, for value received, it promised to pay the said sum of $500 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bond, the sum of $500 to wit, on the 1st day of July, 1927.

This petitioner's said bond was duly authenticated at the time of the purchase thereof by endorsement thereon by

the Chicago Title & Trust Co. as required by its terms and is bond No. 4627 and the certificate therein is No. 18353.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annu-, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The bond was one of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable [fol. 126] prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bond No. 4726 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from her said purchase in July, 1927 has ever been and now is the owner and holder of said bond and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 127] (h) The Claim of Daniel Larkin

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. 4634 in the amount of $500

wherein, for value received, it promised to pay the said sum of $500 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bond, the sum of $500 to wit, on or about the 18th day of July, 1927.

This petitioner's said bond was duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and is bond No. 4634 and the certificate therein is No. 18353.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bond was one of a duly authorized issue of bon-s of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable [fol. 128] prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bond No. 4634 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in July, 1927 has ever been and now is the owner and holder of said bond and coupons, which are not secured, and this petitioner holds no security

for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 129] (i) The Claim of Newell Becker

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. 8783 in the amount of $1,000 wherein, for value received, it promised to pay the said sum of $1,000 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bond, the sum of $1,000 to wit, on the 1st day of August, 1928.

This petitioner's said bond was duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Company as required by its terms and is bond No. 8783 and the certificate therein is No. 18353.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bond was one of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon [fol. 130] the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bond No. 8783 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in August, 1928 has ever been and now is the owner and holder of said bond and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 131] (j) The Claim of Ralph W. Eldredge

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bonds (so-called) Nos. 1618 and 3449 in the amounts of $100 and $500 respectively wherein, for value received, it promised to pay the said sums of $100 and $500 respectively on March 1, 1937.

This petitioner paid to said American Bond for said debenture bonds, the sums of $100 and $500 respectively, to wit, on the 14th day of June, 1927.

This petitioner's said bonds were duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and are bonds Nos. 1618 and 3449 respectively and the certificate therein is No. 18353.

The said bonds further provided that until such principal sums were paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bonds were of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bonds provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of [fol. 132] the bonds of said issue may be declared due and

payable prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bonds Nos. 1618 and 3449 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in June, 1927 has ever been and now is the owner and holder of said bonds and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 133] (k) The Claim of J. L. Hone

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. 4827 in the amount of $500 wherein, for value received, it promised to pay the said sum of $500 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bond, the sum of $500 to wit, on or about the 1st day of October, 1927.

This petitioner's said bond was duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and is bond No. 4827 and the certificate therein is No. 18353.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bond was one of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal

amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon [fol. 134] the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930, the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bond No. 4827 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in October, 1927 has ever been and now is the owner and holder of said bond and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 135] (L) The Claim of Cora Vunck

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. 4816 in the amount of $500 wherein, for value received, it promised to pay the said sum of $500 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bond, the sum of $500 to wit, on the 30th day of September, 1927.

This petitioner's said bond was duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and is bond No. 4816 and the certificate therein is No. 18353.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bond was one of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable [fol. 136] prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bond No. 4816 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from her said purchase in September, 1927 has ever been and now is the owner and holder of said bond and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner or of the said alleged bankrupt.

[fol. 137] (m) The Claim of Charles M. Winchester

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bonds (so-called) Nos. 6094 and 6096 in the amount of $1,000 each wherein, for value received, it promised to pay the said sums of $1,000 respectively on March 1. 1937.

This petitioner paid to said American Bond for said debenture bonds, the sum of $1,000 respectively, to wit, on or about the 15th day of March, 1928.

This petitioner's said bonds were duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and are bonds Nos. 6094 and 6096 and the certificate therein is No. 18353.

The said bonds further provided that until such principal sums were paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bonds were of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bonds provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable [fol. 138] prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bonds Nos. 6094 and 6096 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupons maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in March, 1928 has ever been and now is the owner and holder of said bonds and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 139] (n) The Claim of William Lawrie

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bonds (so-called) Nos. 4803 and 4804 in the amount of $500 each wherein, for value received, it promised to pay the said sums of $500 respectively on March 1, 1937.

This petitioner paid to said American Bond for said debenture bonds, the sums of $500 respectively, to wit, on the 29th day of July, 1927.

This petitioner's said bonds were duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and are bonds Nos. 4803 and 4804 and the certificate therein is No. 18353.

The said bonds further provided that until such principal sums were paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bonds were of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bonds provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable [fol. 140] prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bonds Nos. 4803 and 4804 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides

the said coupons maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in July, 1927 has ever been and now is the owner and holder of said bonds and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 141] (o) The Claim of Minnie C. Bame

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bonds (so-called) Nos. 6091 and 2695 in the amounts of $1,000 and $500 respectively wherein, for value received, it promised to pay the said sums of $1,000 and $500 respectively on March 1, 1937.

This petitioner paid to said American Bond for said debenture bonds, the sums of $1,000 and $500 respectively, to wit, on the 26th day of December, 1929.

This petitioner's said bonds were duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and are bonds Nos. 6091 and 2695 and the certificate therein is No. 18353.

The said bonds further provided that until such principal sums were paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bonds were of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bonds provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable [fol. 142] prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bonds Nos. 6091 and 2695 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupons maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from her said purchase in December, 1929 has ever been and now is the owner and holder of said bonds and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 143] (p) The Claim of S. J. Bennett

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. 4384 in the amount of $500 wherein, for value received, it promised to pay the said sum of $500 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bond, the sum of $500 to wit, on or about the 8th day of March, 1928.

This petitioner's said bond was duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and is bond No. 4384 and the certificate therein is No. 18353.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bond was one of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all

of the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon [fol. 144] the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bond No. 4384 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in March, 1928 has ever been and now is the owner and holder of said bond and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 145] (q) The Claim of Lloyd S. Cheney

On or about March 1, 1927 the said alleged bankrupt made and executed its certain 6½% sinking fund gold debenture bonds (so-called) Nos. 8781 and 4425 in the amounts of $1,000 and $500 respectively wherein, for value received, it promised to pay the said sums of $1,000 and $500 respectively on March 1, 1937.

This petitioner paid to the said American Bond for said debenture bonds, the sums of $1,000 and $500 respectively, to wit, on the 28th day of May, 1928.

This petitioner's said bonds were duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Co. as required by its terms and are bonds Nos. 8781 and 4425 and the certificate therein is No. 18353.

The said bonds further provided that until such principal sums were paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, such interest to be payable semi-annually on the

1st day of March and the 1st day of September in each year. The said bonds were of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bonds provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of [fol. 146] the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930 the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bonds Nos. 8781 and 4425 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupons maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in May, 1928 has ever been and now is the owner and holder of said bonds and coupons, which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

[fol. 147] 8. Within the four months next immediately preceding the filing of this petition, the said alleged bankrupt was and still is insolvent and while so insolvent committed acts of bankruptcy as follows:

(a) During the said period of four months next preceding the filing of this petition and while so insolvent the said alleged bankrupt paid to the Merchants National Bank of Poughkeepsie a certain sum, to wit, $400.00 as interest on obligations to that Bank. The said Merchants National Bank of Poughkeepsie was a creditor of the said American

Bond for the amount of $25,000 holding the promissory note of the American Bond for the said sum of $25,000. It holds security collateral to the said note of $25,000, consisting of $40,000 par value of the bonds of the Book Washington Boulevard Building at Detroit, Michigan, but the bond issue covering these buildings was already in default when such interest payment was made and the market value of said bonds so held as collateral was at the time of such payment and is now not more than $10,000; and said payment of $400.00 preferred the said Merchants National Bank over other creditors of the bankrupt.

During the same period of four months and while so insolvent the said alleged bankrupt also paid interest at the rate of 5% per annum, in an amount aggregating approximately $20,000 to each of the following named banks on its promissory notes held by such banks, to wit:

[fol. 148]

Name of bank	Amount of loans as of Sept. 7, 1929
American State Bank, Detroit, Mich	$135,960.00
Atlantic National Bank, Boston, Mass	91,900.00
Central Trust Company, Cincinnati, O	97,467.00
Central Trust Company of Illinois	315,230.00
Chatham Phenix National Bank & Trust Company, New York, N. Y	224,100.84
Colonial Trust Company, Pittsburgh, Pa	9,609.00
Commercial National Bank, Peoria, Ill	30,000.00
Detroit Savings Bank, Detroit, Mich	130,500.00
First Mechanics Nat'l Bank, Trenton, N. J	57,092.50
First National Bank, Boston, Mass	117,980.00
First National Bank, Chicago, Ill	275,425.00
First National Bank, Davenport, Iowa	60,000.00
First Trust Company, Albany, N. Y	49,045.00
Grand Rapids Savings Bank, Grand Rapids, Mich	28,600.00
Guaranty State Bank, Detroit, Mich	50,000.00
Jefferson Co. Nat'l Bank, Watertown, N. Y	33,988.90
National Bank of Commerce, Detroit, Mich	125,000.00
Pennsylvania Co. of Philadelphia, Philadelphia, Pa	160,000.00
Philadelphia Nat'l Bank, Philadelphia, Pa	169,250.00
Utica Trust & Deposit Co., Utica, N. Y	99,150.00
	$2,478,323.24

The said banks hold security collateral to the said notes, consisting of bonds of the Book Washington Boulevard Buildings at Detroit, Michigan and other like security but [fol. 149] the bond issues covering many of those buildings on which such collateral bonds were secured (including said Book Washington Boulevard Building bonds) were at the time of such payments already in default and the value of all of the said bonds so pledged had greatly shrunken so that the said banks were, none of them, at the

time of such interest payments, secured creditors for the total amount of the indebtedness from the American Bond to them respectively, or to any greater extent than fifty (50%) per cent of their respective claims, and such payments of interest to the said banks were each and all preferential.

The following of the said banks hold as collateral nothing but such bonds on the said Book Washington Boulevard Buildings on which there has been a default in the payment of both principal and interest;

Atlantic National Bank, Boston, Mass.
Commercial National Bank, Peoria, Ill.
First National Bank, Davenport, Iowa.
Grand Rapids Savings Bank, Grand Rapids, Mich.
Guaranty State Bank, Detroit, Mich.
National Bank of Commerce, Detroit, Mich.

(b) The said alleged bankrupt transferred, while insolvent and within such four months periods, a portion of its property to one or more of its creditors with intent to prefer such creditors over its other creditors as follows: It so paid out to the creditors hereinafter stated the sums of money set opposite their respective names:

[fol. 150] 1) To Arthur Draper, the President of American Bond	$3,000.00
2) To Walter A. Murphy, a Vice-President of American Bond	2,000.00
3) To Harold A. Moore, a Vice-President of American Bond	2,000.00
4) To George Nauman, an Assistant Secretary of American Bond	500.00
5) To Edgar M. MacDonald, the Manager of the New York Office of the American Bond	2,000.00

Such payments to its officers were made by the bankrupt after its default aforesaid on such debenture bonds so issued by it had occurred, and while such default thereon still continued.

(c) The said alleged bankrupt transferred, while insolvent and within four months next preceding the filing of this petition, a portion of its property to one or more of its creditors with intent to prefer such creditors over its other creditors as follows: It paid out to various attorneys, accountants, bondholders committees, and employees dur-

ing the months of February, March, April and May, 1931, large sums of money, to wit, as much as $25,000 the names of such persons being at the present time unknown to your petitioners, but such persons being hereby designated as "John Doe" and "Richard Roe."

(d) The said alleged bankrupt has transferred and concealed and still keeps concealed, part of its property in an attempt to hinder, delay and defraud its creditors, in that it transferred without consideration and concealed and is now continuing to conceal in the names of another person [fol. 151] or persons, the sum of approximately $1,000,000, due to it under condemnation proceedings of the Libby Hotel in the Borough of Manhattan, in the City of New York, in the State of New York, which is shortly to be paid, and which is apt to be diverted in whole or in large part from the treasury of said American Bond.

(e) The said alleged bankrupt, while insolvent, had a receiver appointed and put in charge of its property as follows: On May 22, 1931, the said American Bond caused a bill in equity to be filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, by H. T. Clarke and other creditors for the appointment of a receiver of the said American Bond on the ground that the American Bond was insolvent. Such receivership was consented to by the American Bond and upon such bill and consent the Chicago Title & Trust Company of Chicago, Illinois, was appointed receiver under a bond of $10,000.

[fol. 152] Wherefore your petitioners pray that service of this petition, with a subpœna, may be made upon the said alleged bankrupt as provided by the Bankruptcy Act and that the said alleged bankrupt may be adjudged a bankrupt within the purview of the said Act.

Dated New York, May 23, 1931.

(a) Royal Indemnity Company by Claude E. Trinder. (b) Lucy G. Adamson, (c) Frances C. Losee, (d) Dr. M. A. Losee, (e) Parkes D. Wendell, (f) Jesse H. Owens, (g) Agnes E. Larkin, (h) Daniel Larkin (i) Newel Becker, (j) Ralph W. Eldredge, (k) J. L. [fol. 153] Hone, (l) Cora Vunck, (m) Charles M. Winchester, (n) Wm. Lawrie, (o) Minnie C. Bame, (p) S. J. Bennett, (q) Lloyd S. Cheney. Frederick R. Dyer, Saul S. Myers.

[fol. 154] This agreement, made and entered into this 18th day of February, 1926, between the Royal Indemnity Company, hereinafter called the "Company," and the American Bond and Mortgage Company, Inc., hereinafter called the "Insured," witnesseth:

Whereas, it is the business of the Insured in part to market mortgage securities on real property; and to better facilitate such marketing, the Insured desires a guarantee of the payment of the principal and interest thereon; and

Whereas, the Insured has made application to the Company for the execution of a bond or bonds, guaranteeing the payment of such principal and interest, when, as and if the Insured shall market such securities; and

Whereas, the Company will issue such bond or bonds upon the condition amongst others, that the Insured will deposit with the Company, in accordance with the terms hereof, satisfactory negotiable collateral for the purpose of partially securing the company against possible loss by reason of the issuance of such bond or bonds;

Now, therefore, in consideration of the premises, and the sum of One ($1.00) Dollar, lawful money of the United States of America, each to the other paid, the parties hereto agree as follows:

That whenever the Company elects to, and does issue its bond or bonds, the substance of which shall guarantee the [fol. 155] payment of the principal and interest of any mortgage securities which the Insured may market, that the Insured will immediately deliver to the Company, acceptable negotiable securities to the value of five (5%) per cent of the aggregate par or face value of all of the mortgage securities which the Company shall have guaranteed.

In the event that the market value of the securities so deposited shall not at any time be equal to the aforesaid percentage, or should the fund created by the deposit of the aforesaid securities become depleted or exhausted by reason of the payment by the Company of any loss under any bond or bonds which it may issue, then, upon demand, the Insured will deliver to the Company further such securities for the like purpose or (at the option of the Insured) a cash payment so that the market value of the said securities and/or cash shall always be equal to five (5%) per cent of the aggregate or par value of all the mortgage securities then outstanding, which the Company shall have

guaranteed. And in the event that the provisions hereof are fully lived up to and fulfilled by the Insured, it is understood and agreed that the liability of the Insured shall be, and hereby is limited to the said deposit. It is the intent hereof that the purpose of this agreement is to clearly fix the liability of the Insured to the Company in the event of loss to an amount not exceeding five (5%) per cent of the aggregate or par value of all mortgage securities, issued and outstanding at any fixed time, which the Company may have guaranteed.

[fol. 156] Should the Insured refuse upon demand to make any deposit of the securities herein required, the Company may summarily apply to a Court of Equity of competent jurisdiction for a decree, specifically requiring the deposit of such securities.

The Company shall have the right, at any time, to apply all or any part of the deposit herein made, to the payment of any loss sustained upon any bond or bonds which it may have issued, notwithstanding that the amount of loss upon any separate issue of mortgage securities which the Company shall have guaranteed may exceed the specific deposit covering such guaranty, and for that purpose the Company may, upon giving two (2) days written notice to the Insured by mail, addressed to 345 Madison Avenue, New York City, sell, assign and deliver and transfer the whole or any part of the said securities at any available market to fully reimburse the Company for such payment or losses together with legal or other costs, charges and expenses incident to such sale; and the Company is hereby granted full right, power and authority so to do, the Insured hereby ratifying and confirming any action of the Company in connection therewith. And upon such sale, the right is also granted to the Company to become purchasers thereof, freed and discharged from any equity of redemption.

The Company upon being furnished with satisfactory evidence of the discharge and release of any and all liability under any bond or bonds which it may have issued [fol. 157] for the payment aforesaid, shall return to the Insured the balance, if any, of such securities and/or cash theretofore deposited.

If the Insured has complied in all respects with the terms, conditions and obligations upon its part to be performed hereunder, then the Company agrees to permit the

Insured to receive interest as it accrues on any of the bonds deposited by the Insured as collateral herein.

The execution of this agreement shall inure to the benefit of, and be binding upon, the respective parties, their successors and assigns.

In witness whereof the parties have by their respective Vice-Presidents duly executed this instrument in duplicate the day and year first above mentioned, and have also caused their respective corporate seals to be affixed the said day and year.

American Bond & Mortgage Co., Inc., by (Sgd.) Hayden W. Ward, Vice-President. Royal Indemnity Company, by (Sgd.) Claude E. Trinder, Vice-President.

In Presence of:

(Signed) Ruth W. Moore.

[fol. 158] State of New York,
County of New York,
City of New York, ss:

On this 16th day of February, 1926, before me personally came Hayden W. Ward to me known, who being by me duly sworn did depose and say that he resides in the City of Kew Gardens, State of New York; that he is the Vice President of the American Bond and Mortgage Company, Inc. the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

Ruth W. Moore, Notary Public, New York County.

State of New York,
County of New York,
City of New York, ss:

On this 17th day of February, 1726, before me personally came Claude E. Trinder to me known, who being by me duly sworn did depose and say that he resides in the City of Mount Vernon, State of New York; that he is the Vice President of the Royal Indemnity Company, the corpo-

ration described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(Signed) H. E. Scanlon, Notary Public, New York County.

[fol. 159] Royal Indemnity Company

Head Office: New York

Milford E. Jewett, President

Bond No.: SX —. Amount: $—

The Royal Indemnity Company, a New York corporation, (hereinafter designated as the "surety company") for and in consideration of the payment to the "surety company" by the Insured of an annual premium of one half of one per centum of the aggregate par or face value of all of the bonds or certificates described in schedule "A" attached hereto, and in further consideration of the terms and conditions hereof, hereby guarantees to —— —— and all subsequent owners and holders of the bonds or certificates listed and described in said schedule "A", subject, however, to the conditions hereinafter set forth (each and every person or corporation to whom, under this clause, this guarantee runs being hereafter included in the designation "the Insured"):

First. Payment of interest, at the rate of — per centum per annum, which shall accrue from the effective date hereof upon the bonds or certificates described in said schedule "A", within five days after the same shall have become due and payable.

Second. Payment of the principal and of every installment thereof as soon as collected, but in no event later than eighteen (18) months after it shall become due and [fol. 160] payment thereof shall have been demanded in writing of surety company by the Insured together with the regular payment of interest at the rate guaranteed

from the due principal date to the date of payment of such principal.

Provided, however, that this guarantee is given by the surety company and is accepted by the Insured subject to the following express conditions:

(1) That this bond shall become effective upon payment of the first annual premium heretofore mentioned to the surety company or its duly authorized agent and will be continued from year to year if the annual premium heretofore mentioned is paid for any such year within 5 days after notice in writing by the Surety to the Insured so to do and in the event that said premium is not paid as aforesaid, all liability of the surety company hereunder shall cease as of the said due date.

(2) That the Insured shall promptly notify the surety company in writing of any assignment of any such bond, bonds, certificate or certificates and that any such assignment must be accepted by the assignee subject to the terms and conditions of this guarantee. A transfer by the Insured to itself, individually or with others, acting in any fiduciary capacity, shall not be considered as assignment within the meaning of this clause.

[fol. 161] (3) That the Insured shall promptly notify the surety company in writing of any action or proceeding of which the Insured has knowledge, affecting any such bond, bonds, certificate or certificates, and of any rights or claims thereunder.

(4) That in event of default in the payment of either interest or principal the Insured shall allow the surety company to exercise the right of option secured to the Insured by such bond, bonds, certificate or certificates and that without further notice or authorization to the Insured the company is hereby authorized to enforce payment in the name of the Insured from time to time of any sums which may become due under any such bond, bonds, certificate or certificates.

(5) That in the event of default in the payment of any interest due upon said bond, bonds, certificate or certificates, the surety company may, if it so elects, pay to the Insured the principal sum and interest due on said bond,

bonds, certificate or certificates, and the Insured shall thereupon assign such bond, bonds, certificate or certificates, together with all rights and claims thereunder, to the surety company or to such other person as it may designate.

Signed, sealed and dated this —— —, ——.

Royal Indemnity Company, by —— ——, Resident Vice-President. —— ——, Resident Assistant Secretary.

Schedule A, Description of Bonds.

[fol. 162] EXHIBIT "C" TO PETITION

Royal

Claim	File	Bond	Assured	Penalty
15367	184108	SX-143747	A. W. & M. Eck	5,000
15384	183788	SX-143478	Norman Keith	9,000
15385	187634	SX-146740	Dora E. McCann	7,000
15386	190236	SX-149013	C. W. Lynch	5,000
15387	191796	SX-150407	R. J. & Ed. Spettel	10,000
15388	197737	SX-155623	C. W. Lynch	5,000
15402	198522	SX-156321	Mrs. C. B. Lynch	2,500
15430	201441	SX-158893	A. W. Humphries	500
15448	186840	SX-146062	Ed. Patten	3,000
15449	205358	SX-162274	M. C. Simmons	1,000
15450	207077	SX-163795	H. L. Grace	1,000
15451	206025	SX-162856	M. D. Andrews	1,000
15452	185228	SX-144686	C. T. Hubbell	1,000
15453	178778	SX-139189	Mrs. N. E. Brandow	2,000
15454	178776	SX-139187	L. Beardslee	4,000
15455	187156	SX-146337	A. I. & S. D. Miller	3,000
15521	217527	SX-173203	Mrs. A. F. Edgerly	12,600
15541	213988	SX-170020	Mrs. & Mr. H. J. Felts	10,000
15542	186839	SX-146061	All Souls Church	8,000
[fol. 163]				
15574	189406	SX-148282	Mrs. C. A. Howitz	5,000
15575	200916	SX-158457	C. W. Lynch	1,000
15577	202855	SX-160086	"	5,000
15578	178781	SX-139192	Mrs. T. Hankammer	2,000
15579	178777	SX-139188	Mrs. Ida McBiffert	2,000
15827	207864	SX-164509	H. V. Ferrell	3,500
17624	191048	SX-149736	Joe Reiman	500
17714	183722	SX-143430	Mr. A. E. Lalouette	35,500
17718	209845	SX-166263	Chas. Robbins	1,000
17719	187918	SX-146965	Dora E. McCann	2,000
17791	188318	SX-146965	S. W. Lichstein	500
18070	207862	SX-164507	P. W. Kinney	3,000
18122	195170	SX-153408	Olmstead & Mulhall	20,000
18389	221351	SX-176668	Verhovay Aid Ass'n	10,000
18521	194753	SX-153062	Universalist Church	5,000
18593	201442	SX-158894	Agnes W. Humphries	500
18743	194353	SX-152741	Mrs. F. J. Sanderson	2,000
18911	198521	SX-156320	Dr. H. F. Morin	1,000
18999	176431	SX-137162	Masonic Homes	55,000
19029	192200	SX-150761	Dr. S. Eschelman	5,000

Claim	File	Bond	Assured	Penalty
[fol. 164]				
19035	212398	SX-168578	D. A. Letourneau	500
19070	207863	SX-164508	Mrs. C. Leopard	13,000
19122	193017	SX-15132	Josie B. & I. C. Irish	6,000
19359	197738	SX-155624	Alma B. Earl	500
19362	197647	SX-155551	"	2,000
19363	191638	SX-150271	Dora S. Lewis	1,000
19841	183789	SX-143479	C. W. Lynch	2,000
19857	194549	SX-152871	Marg. Johnston	5,000
19858	201443	SX-158895	Dora E. McCann	2,000
19872	196672	SX-154704	Grace Wick	2,000
19885	209844	SX-166262	Jos. Rosenmiller, Jr	1,400
20249	203413	SX-160544	Mrs. S. M. Dyer	500
20350	198871	SX-156626	E. Humphries	1,000
20464	178780	SX-139191	Dr. Kaufman Schlivek	10,000
20601	185857	SX-145225	Mrs. G. H. Smith	5,000
20662	186386	SX-145684	C. T. Hubbell	1,000
21350	209132	SX-165054	Ogdensburg Hospital	4,000
18881	198173	SX-156015	Guilford Trust Company	2,000
22873	191169	SX-149854	J. C. Sheldon	5,000
22909	212403	SX-168583	E. F. Skillings	1,500
22220	214367	SX-170370	J. B. & I. C. Irish	500
[fol. 165]				
.....	195397	SX-153598	Mr. F. Gertner	6,000
.....	180328	SX-140502	L. B. Buckbee	10,000
.....	180329	SX-140503	Clotilde Hout	10,000
.....	180914	SX-14120	K. J. Spettel	10,000
.....	184203	SX-143819	Norman Keith	1,000
.....	186945	SX-146157	Amity Chapter RAM	5,000
.....	189719	SX-148553	Fanny Vogel	7,000
.....	191168	SX-149853	Anna Corowin	500
.....	191226	SX-149906	B. P. Barnes	1,500
.....	191227	SX-149970	Elsie Schliwek	5,000
.....	191228	SX-149908	Birkenfeld	5,000
.....	191415	SX-150077	A. Schnieder	1,000
.....	191416	SX-150078	Frank Schnieder	1,000
.....	191417	SX-150079	Anna Schnieder	1,000
.....	192124	SX-150689	D. Gregorey	5,000
.....	192125	SX-150690	A. Russell	1,500
.....	194352	SX-152740	I. D. Warner	2,000
.....	195168	SX-153406	Penn. Co. for Ins. on Lives & Granting Annuities	50,000
.....	196671	SX-154703	R. K. Wick	1,000
.....	196818	SX-154820	C. W. Lynch	2,000
[fol. 166]				
.....	195819	SX-154821	C. P. Kimball	1,000
.....	196820	SX-154822	M. E. Day	2,500
.....	197093	SX-155067	Manistee Cty. Svgs. Bk	25,000
.....	197094	SX-155068	Concord Free Public Library	6,000
.....	197095	SX-155069	Leo Weller	5,000
.....	197401	SX-155336	L. E. Kenedy	2,500
.....	197402	SX-155337	C. W. Lynch	2,000
.....	197403	SX-155338	J. W. Allser	10,000
.....	200916	SX-158456	C. W. Lynch	1,000
.....	201438	SX-158890	Ogdensburg City Hospital	1,000
.....	201439	SX-158891	"	1,000
.....	201440	SX-158892	"	4,000
.....	201849	SX-159228	M. R. Rennie	1,000
.....	201850	SX-159229	"	1,000
.....	201851	SX-159230	S. S. Vunck	2,500
.....	201852	SX-159231	"	2,500
.....	202091	SX-159429	J. A. Keim	1,000
.....	202323	SX-119623	M. A. Baskin	10,000

Claim	File	Bond	Assured	Penalty
.....	202324	SX-119624	R. G. Krause	700
.....	205509	SX-162401	Dis Perrin	5,000
[fol. 167]				
.....	205636	SX-162514	H. R. Hubbell	2,000
.....	207860	SX-164505	E. M. Herron	1,000
.....	208324	SX-164909	J. R. Nickles	1,000
.....	212401	SX-168581	H. R. Hubbell	2,000
.....	215142	SX-171060	H. J. Felts	7,000
.....	182373	SX-142298	Mrs. S. Kafner	500
.....	194351	SX-152739	Miss C. Keim	1,000
.....	195557	SX-153740	C. W. Lynch	2,000
			Total	$540,700

[fol. 168] United States of America,

State of Maine

Number 6845

$1,000. (Vignette) $1,000

American Bond and Mortgage Company Six and One-half Per Cent Sinking-fund Gold Debenture Bond

American Bond and Mortgage Company, a corporation of the State of Maine (hereinafter called the "Company"), for value received, hereby promises to pay on the first day of March, 1937 (unless this bond be sooner redeemed as hereinafter provided), to bearer, or, if registered, to the registered owner of this bond, at the office of the Company, 127 North Dearborn Street, Chicago, Illinois, or, at the option of such bearer or registered owner, at the office of the Company, 345 Madison Avenue, New York City, New York, the principal sum of one thousand dollars ($1,000.00) in gold coin of the United States of America of or equal to the standard of weight and fineness existing on March 1, 1927, and, until such principal sum shall have been paid, to pay interest thereon, in like gold coin, from March 1, 1927, at the rate of six and one-half per centum per annum, such interest to be payable, at the option of the bearer of the interest coupons, at either of the places hereinbefore designated for the payment of the principal of this bond, semi-annually on the first day of March and the first day of September in each year, such interest to the date of the fixed maturity of this bond being

payable only upon presentation and surrender, as they severally mature, of the coupons for such interest hereto annexed.

[fol. 169] All payments on this bond, both of principal and interest, shall be made without deduction for any Federal Income Tax (except that portion thereof which may be in excess of two per centum of such interest) which the Company, its successors or assigns, may be required to pay thereon, or authorized to deduct or retain therefrom, under any present or future law or requirement of the United States of America. The Company will refund and repay to the owner hereof, if a resident of the Commonwealth of Pennsylvania, or the State of Connecticut, or the District of Columbia, or the State of Michigan, or the State of Vermont, or the State of Iowa, as the case may be, the amount of any lawful tax hereon required to be paid and paid by him in or for any year to the Commonwealth or State of his residence, not exceeding four (4) mills per annum to the Commonwealth of Pennsylvania or to the State of Vermont or to the State of Connecticut, or five (5) mills per annum to the District of Columbia or to the State of Michigan, or six (6) mills per annum to the State of Iowa, on every dollar of the principal amount hereof; and the Company will refund and repay to the owner hereof, if a resident of the Commonwealth of Massachusetts or the State of New Hampshire, the amount of any lawful income tax upon the interest hereon paid by him in and for any year to the Commonwealth or State of his residence, not exceeding six per centum (6%) of such interest; provided such owner shall present to the Company, within sixty (60) days after the payment of any such tax, evidence satisfactory to the Company showing payment — such tax; but the Company shall in no event be liable to reimburse such owner for any interest accrued or penalty imposed or paid in addition to the amount of such tax as originally assessed; all as provided in the indenture hereinafter mentioned.

[fol. 170] This bond is one of a duly authorized issue of bonds of the Company for the aggregate principal amount of Five Million Dollars ($5,000,000.00), all of which bonds are of like tenor, except as to denomination, and all of which bonds have been issued or are to be issued under and in pursuance of, and are to be received and held sub-

ject to, a trust indenture dated March 1, 1927, duly executed by the Company to Chicago Title and Trust Company, as Trustee, to which indenture reference is hereby made with the same effect as though herein set forth at length, and to all of the provisions of which this bond and the rights of the holder or registered owner are subject, and to which by the receipt hereof the holder or registered owner assents.

In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided.

This bond may, at the option of the Company, be redeemed on any interest date prior to its fixed maturity, at par and accrued interest, plus a premium equal to the following percentage of the principal, to-wit: if such redemption date occur on or before March 1, 1930, one per centum; if thereafter, one-half of one percentum: all in the manner and upon the terms provided in said indenture.

No recourse shall be had for the payment of the principal of or interest on this bond against any incorporator, stockholder, director or officer of the Company, past, pres- [fol. 171] ent or future, either directly or through the Company by virtue of any statute or constitution, or by the enforcement of any assessment or penalty, or otherwise howsoever, any and all liability of incorporators, stockholders, directors and officers of the Company being hereby waived and released by each successive holder of this bond by the acceptance hereof.

This bond shall pass by delivery unless registered as to principal in the owner's name on registration books of the Company, to be kept at the office of American Trust and Safe Deposit Company, in the City of Chicago, Illinois, such registration being noted hereon by the bond registrar of the Company, after which no transfer shall be valid unless made on said books in the manner prescribed in said indenture and similarly noted hereon, but the same may be discharged from registration by being transferred in like

manner to bearer, after which transferability by delivery shall be restored, and again, from time to time, it may be registered or transferred to bearer as before. Such registration, however, shall not affect the transferability of the coupons for the interest hereon by delivery merely, and payment to the bearer thereof shall discharge the Company in respect of the interest therein mentioned, whether or not the bond shall have been registered.

Neither this bond, nor any of the coupons for interest thereon, shall become or be valid until the bond shall have been authenticated by the certificate endorsed hereon, duly signed by Chicago Title and Trust Company, as Trustee under said indenture, or by its successor in said trust.

[fol. 172] All rights of action on this bond and the annexed interest coupons, except as otherwise provided by said indenture, are vested in said Trustee, and the enforcement thereof is governed by the provisions of said indenture.

In witness whereof American Bond and Mortgage Company, has caused this bond to be signed by its President or a Vice-President, and its corporate seal to be hereunto affixed and to be attested by its Secretary or an Assistant Secretary, and the coupons for such interest bearing the facsimile signature of its Treasurer to be attached hereto, as of the first day of March, A. D. 1927.

American Bond and Mortgage Company, by W. A. Murphy, Vice-President.

Attest:

Kenneth D. Moore, Secretary.

Required U. S. Revenue Stamps for this bond have been placed upon the trust deed securing same and duly cancelled.

[fol. 173] American Bond and Mortgage Company to Chicago Title and Trust Company, Trustee

Trust Indenture

Dated March 1, 1927

[fol. 174] This indenture, dated the first day of March, A. D. 1927, but actually made and entered into the 26th day of March, A. D. 1927, by and between American Bond and

Mortgage Company, a corporation organized and existing by virtue of the laws of the State of Maine, party of the first part (hereinafter termed the "Company"), and Chicago Title and Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, party of the second part (hereinafter termed the "Trustee"), witnesseth:

That whereas, the Company is duly authorized to borrow money from time to time for its corporate purposes and to issue the bonds hereinafter provided for and to execute this Indenture; and

Whereas, the issuance of said bonds and the execution and delivery of this Indenture have been authorized by resolutions adopted by the Board of Directors of the Company at a meeting of such Board of Directors duly and regularly called and held; and

Whereas, said bonds and the interest coupons to be attached thereto and the certificate to be signed by the Trustee for the authentication of each of said bonds are to be substantially in the forms following, to wit:

(Form of Bond)

No. —. $ —

United States of America,
State of Maine

American Bond and Mortgage Company 6½% Sinking-fund Gold Debenture Bond

American Bond and Mortgage Company, a corporation [fol. 175] of the State of Maine (hereinafter called the "Company"), for value received, hereby promises to pay on the first day of March, 1937 (unless this bond be sooner redeemed as hereinafter provided), to bearer, or, if registered, to the registered owner of this bond, at the office of the Company, 127 North Dearborn Street, Chicago, Illinois, or at the option of such bearer or registered owner, at the office of the Company, 345 Madison Avenue, New York City, New York, the principal sum of — Dollars ($—), in gold coin of the United States of America of or equal to the standard of weight and fineness existing on March 1, 1927, and, until such principal sum shall have

been paid, to pay interest thereon, in like gold coin, from March 1, 1927, at the rate of six and one-half per centum per annum, such interest to be payable, at the option of the bearer of the interest coupons, at either of the places hereinbefore designated for the payment of the principal of this bond, semi-annually on the first day of March and the first day of September in each year, such interest to the date of the fixed maturity of this bond being payable only upon presentation and surrender, as they severally mature, of the coupons for such interest hereto annexed.

All payments on this bond, both of principal and interest, shall be made without deduction for any Federal income tax (except that portion thereof which may be in excess of two per centum of such interest) which the Company, its successors or assigns, may be required to pay thereon, or authorized to deduct or retain therefrom, under any present or future law or requirement of the United States of America. The Company will refund and repay to the owner hereof, if a resident of the Commonwealth of Pennsylvania, or the State of Connecticut, or the District of Columbia, or the State of Michigan, or the State of Vermont, or the State of Iowa, as the case may be, the amount of any lawful tax hereon required to be paid and paid by him in or for any year to the Commonwealth or State of his residence, not exceeding four (4) mills per annum to the Commonwealth of Pennsylvania or to the State of Vermont or to the State of Connecticut, or five (5) mills per annum to the District of Columbia or to the State of Michigan, or six (6) mills per annum to the State of Iowa, on every dollar of the principal amount hereof; and the Company will refund and repay to the owner hereof, if a resident of the Commonwealth of Massachusetts or the State of New Hampshire, the amount of any lawful income tax upon the interest hereon paid by him in and for any year to the Commonwealth or State of his residence, not exceeding six per centum (6%) of such interest; provided such owner shall present to the Company, within sixty (60) days after the payment of any such tax, evidence satisfactory to the Company showing payment of such tax; but the Company shall in no event be liable to reimburse such [fol. 176] owner for any interest accrued or penalty im-

posed or paid in addition to the amount of such tax as originally assessed; all as provided in the Indenture hereinafter mentioned.

This bond is one of a duly authorized issue of bonds of the Company for the aggregate principal amount of Five Million Dollars ($5,000,000.00), all of which bonds are of like tenor, except as to denomination, and all of which bonds have been issued or are to be issued under and in pursuance of, and are to be received and held subject to, a Trust Indenture dated March 1, 1927, duly executed by the Company to Chicago Title and Trust Company, as Trustee, to which Indenture reference is hereby made with the same effect as though herein set forth at length, and to all of the provisions of which this bond and the rights of the holder or registered owner are subject, and to which by the receipt hereof the holder or registered owner assents.

In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon the conditions expressed in said Indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said Indenture provided.

This bond may, at the option of the Company be redeemed on any interest date prior to its fixed maturity, at par and accrued interest, plus a premium equal to the following percentage of the principal, to wit: If such redemption date occur on or before March 1, 1930, one per centum; if thereafter, one-half of one per centum; all in the manner and upon the terms provided in said Indenture.

No recourse shall be had for the payment of the principal of or interest on this bond against any incorporator, stockholder, director or officer of the Company, past, present or future, either directly or through the Company by virtue of any statute or constitution, or by the enforcement of any assessment or penalty, or otherwise howsoever, any and all liability of incorporators, stockholders, directors and officers of the Company being hereby waived and released by each successive holder of this bond by the acceptance hereof.

This bond shall pass by delivery unless registered as to principal in the owner's name on registration books of the

Company, to be kept at the office of American Trust and Safe Deposit Company, in the City of Chicago, Illinois, such registration being noted hereon by the Bond Registrar of the Company, after which no transfer shall be valid [fol. 177] unless made on said books in the manner prescribed in said Indenture and similarly noted hereon, but the same may be discharged from registration by being transferred in like manner to bearer, after which transferability by delivery shall be restored, and again, from time to time, it may be registered or transferred to bearer as before. Such registration, however, shall not affect the transferability of the coupons for the interest hereon by delivery merely, and payment to the bearer thereof shall discharge the Company in respect of the interest therein mentioned, whether or not the bond shall have been registered.

Neither this bond, nor any of the coupons for interest thereon, shall become or be valid until the bond shall have been authenticated by the certificate endorsed hereon, duly signed by Chicago Title and Trust Company, as Trustee under said Indenture, or by its successor in said trust.

All rights of action on this bond and the annexed interest coupons, except as otherwise provided by said Indenture, are vested in said Trustee, and the enforcement thereof is governed by the provisions of said Indenture.

In witness whereof, American Bond and Mortgage Company, has caused this bond to be signed by its President or a Vice-President, and its corporate seal to be hereunto affixed and to be attested by its Secretary or an Assistant Secretary, and the coupons for such interest bearing the facsimile signature of its Treasurer to be attached hereto, as of the first day of March, A. D. 1927.

American Bond and Mortgage Company, by —— ——, President.

Attest:

—— ——, Secretary.

(Form of Interest Coupon)

No. —. $—

On the first day of —, A. D. 19—, American Bond and Mortgage Company, will pay to the bearer hereof, at the

office of American Bond and Mortgage Company, 127 North Dearborn Street, Chicago, Illinois, or, at the option of such bearer, at the office of said Company, 345 Madison Avenue, New York City, New York, upon the surrender hereof, — Dollars ($—), in gold coin of the United States of America of or equal to the standard of weight and fineness existing on March 1, 1927, without deduction for Federal income taxes (except that portion thereof which may be in excess [fol. 178] of two per centum hereof), being semi-annual interest then due upon its 6½% Sinking Fund Gold Debenture Bond dated as of March 1, 1927, and bearing the serial number in the margin hereof, subject to all of the terms of said bond and of the Trust Indenture therein mentioned.

—— ——, Treasurer.

Dated March 1, 1927.

(Form of Trustee's Certificate)

It is hereby certified that this bond is one of the bonds mentioned and described in the Trust Indenture within referred to.

Chicago Title and Trust Company, Trustee, by —— ——, Assistant Secretary.

And whereas, in pursuance of the resolutions of the Board of Directors of the Company, and in pursuance of all and ever legal power and authority in it vested, the Company has determined to make, execute and deliver bonds as hereinabove and hereinafter more particularly set forth, and, for the benefit of the holders thereof, to execute and deliver this Indenture;

And whereas, all requirements essential to the valid issuance of said bonds and the valid execution of this Indenture have been duly complied with;

Now, therefore, this indenture witnesseth that in consideration of the premises, and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of One Dollar ($1.00) lawful money of the United States of America, duly paid by the Trustee to the Company, at or [fol. 179] before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, it is

mutually covenanted and agreed by and between the parties hereto, as follows:

Article I

This Indenture is for the common and equal use, benefit and security of all and singular the present and future holders or owners of said bonds and coupons, or any of them, without preference, priority or distinction of any of said bonds over any of the others by reason of priority in the issue, authentication, sale or negotiation thereof or otherwise.

Article II

Section 1. All bonds to be issued hereunder shall be signed by the President, or a Vice-President, of the Company, and the corporate seal of the Company shall be thereto affixed and attested by its Secretary, or an Assistant Secretary. In case any officer who shall sign or seal any bond as aforesaid shall cease to be such officer before any bond so signed or sealed shall have been actually authenticated and delivered by the Trustee such bond may, nevertheless, upon the request of the Company, be issued, authenticated and delivered as though such person had not ceased to be an officer of the Company. Any bond issued hereunder may be signed or sealed by any person who may be an officer of the Company at the time of such signing or sealing, although such person may not have been such officer at the date of such bond.

[fol. 180] Sec. 2. The bonds to be issued hereunder shall be limited in aggregate principal amount to $5,000,000, shall be in the denominations of $1,000, $500 and $100, as may be specified in the order for the authentication thereof, and shall be numbered and/or lettered in such manner as may be directed in such order.

Any such bond may bear such additional letter or letters and/or other designation or designations and may contain therein or have imprinted thereon such provisions as may be required to comply with the rules of any brokers' board or exchange or with the order of any governmental body having jurisdiction in the premises or to conform to usage.

Sec. 3. The coupons to be attached to said bonds shall be authenticated by the facsimile signature of the present

Treasurer or any future Treasurer of the Company, it being intended that the Company may adopt and use for that purpose the facsimile signature of any such Treasurer notwithstanding that he may have ceased to be the Treasurer of the Company at the time when said bonds shall be authenticated and delivered.

Sec. 4. All bonds, when executed by the Company, shall be delivered to the Trustee, to be authenticated by it, and the Trustee shall forthwith authenticate and deliver the same upon the order of the President or a Vice-President of the Company, without any obligation on the part of the Trustee to see to the use or application of said bonds or their proceeds. Only such bonds as shall bear thereon the certificate of the Trustee, duly signed shall be entitled to [fol. 181] the benefit of this Indenture, and such certificate of the Trustee upon any such bond executed on behalf of the Company shall be conclusive evidence that the bond so authenticated has been duly issued hereunder and is entitled to the benefits of the trust hereby created.

Sec. 5. The holder of any bond or bonds outstanding hereunder shall have the right to exchange the same for a like principal amount of bonds hereby secured of any other denomination or denominations hereinabove described, upon payment of a reasonable charge to the Company, and upon surrender of any such outstanding bonds to the Trustee for cancellation, with all unmatured coupons thereto appertaining, the Company shall execute and the Trustee shall authenticate and deliver, new bonds hereby secured for the same aggregate principal amount and otherwise of the same tenor, with all unmatured coupons thereto appertaining, and said new bonds so authenticated and delivered shall be entitled to the same benefit under this Indenture as the bonds in exchange for which they were so issued.

Sec. 6. The Company shall keep at the office of American Trust and Safe Deposit Company, in the City of Chicago, Illinois (which is hereby appointed Registrar for such bonds) books for the registry and transfer (without expense to the holder), as in this Indenture and said bonds provided, of bonds issued hereunder. Such books shall, in addition to the name of the owner of each registered bond, show the address of each such owner.

[fol. 182] Any bond may be registered, as to principal only, on the said books of the Company at such place of

registration and such registration shall be noted on such bond by the Registrar, and after such registration no transfer shall be valid unless made on said books by the registered owner in person, or by his duly authorized attorney, and similarly noted on the bond. Upon presentation to such Registrar of any such bond registered as to principal, accompanied by a written instrument of transfer, in form approved by such Registrar, executed by the registered owner, such bond shall be transferred upon such books. The registered owner of any such bond registered as to principal shall also have the right to cause the same to be discharged from registry by transfer to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond, when due, shall be payable to the person presenting the bond. Any such bond registered as payable to bearer may be registered again in the name of the owner with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired. Registration as to principal of any bond, however, shall not affect the negotiability of the coupons appertaining to such bond, but title to every such coupon shall continue to pass by delivery and it shall remain payable to bearer.

Sec. 7. Pending the preparation of the definitive bonds to be issued under this Indenture, the Company may execute and deliver temporary printed or typewritten bonds without any, or with one or more, interest coupons, substantially of the tenor of the definitive bonds, in amounts [fol. 183] of $100 or any multiple thereof. Any such temporary bonds shall be authenticated by the Trustee in the same manner as the definitive bonds and such authentication shall constitute conclusive evidence that the temporary bonds so authenticated have been duly issued under this Indenture and that the holders thereof are entitled to the benefits of the trust hereby created. Such temporary bonds issued and authenticated as aforesaid shall be exchangeable, without expense to the holder, for definitive bonds to be issued under this Indenture, and upon any such exchange such temporary bonds shall be forthwith cancelled by the Trustee and delivered to the Company. Any such temporary bonds may also, with the consent of the Company, be exchanged for other temporary bonds of the same issue and for the same aggregate principal amount. Until

so exchanged, said temporary bonds shall be in all respects entitled to the benefit of this Indenture as bonds issued and authenticated hereunder. Without unnecessary delay the Company will execute and will furnish such definitive bonds to be exchanged for such temporary bonds upon surrender of such temporary bonds.

Sec. 8. In case any bond or coupon issued hereunder shall be mutilated, lost, stolen, or destroyed, the Company may in its discretion issue and deliver a new bond or coupon of like tenor and date (and the Trustee shall thereupon authenti- [fol. 184] cate such new bond) in exchange and substitution for and upon cancellation of the mutilated bond or coupon, or in lieu of and substitution for the bond or coupon so lost, stolen or destroyed, upon receipt of evidence satisfactory to the Company and the Trustee of the loss, theft or destruction of such bond or coupon, and upon receipt also of like satisfactory indemnity. The Trustee shall incur no liability for anything done by it under this Section.

Sec. 9. Nothing in this Indenture, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the parties hereto, and the holders of the bonds and coupons issued under this Indenture, any right, remedy or claim, legal or equitable, under or by reason of this Indenture, or any covenant, condition or stipulation hereof; this Indenture, and all its covenants, conditions and stipulations, being intended to be, and being, for the sole and exclusive benefit of the parties hereto, and of the holders from time to time of the bonds and coupons issued hereunder.

Article III

Section 1. All or any of the bonds issued hereunder may be redeemed by the Company on any interest date prior to their regular maturity by paying the principal of the bonds [fol. 185] so redeemed, the interest accrued thereon to the redemption date and the premium stipulated in said bond to be paid upon such redemption, all as hereinafter more fully provided. If the Company shall elect to redeem any of the bonds hereunder it shall notify the Trustee, at least thirty-five days prior to the interest date on which it is proposed to redeem any such bonds, of the aggregate principal amount of bonds which the Company desires to re-

deem. If it is desired to redeem less than all the bonds then outstanding hereunder, the bonds to be redeemed shall be selected by the Trustee by lot, and it shall certify to the Company the numbers of the bonds so selected. The Company shall thereupon publish a notice that said bonds are called for payment on the day fixed for the redemption thereof, at least once in a newspaper printed in English and published and of general circulation in the City of Chicago, in the State of Ilinois, and in a like newspaper in the Borough of Manhattan, in the City and State of New York, such publication of said notice to be made at least thirty days before the date fixed for the redemption of such bonds. If less than all the outstanding bonds are to be redeemed, such notice shall state the serial numbers of the bonds to be so redeemed. Within five days after the first publication thereof, the Company shall mail a copy of such notice to the owner of any registered bond so called for redemption whose address is shown on the bond register.

[fol. 186] Upon the deposit with the Trustee, on or prior to the redemption date, of the amount necessary to redeem the bonds so called for payment, and the giving of such notice, the bonds so called for payment shall cease to bear interest after such redemption date, anything in said bonds, or the coupons appertaining thereto, or this Indenture, to the contrary notwithstanding, and such deposit with the Trustee shall constitute full payment of said bonds as between the holders thereof and the Company. If any bond called for payment shall not be presented for payment on the redemption date, the amount payable in respect of such bond shall be held by the Trustee for account of the holder thereof, and shall be paid to the holder of such bond, upon presentation for cancellation of such bond in negotiable form with the appropriate coupons. The Trustee shall not be chargeable with interest on moneys deposited with it for the redemption of bonds.

Sec. 2. In order to create a sinking fund for the retirement of bonds issued hereunder, the Company covenants that it will pay to the Trustee the following sums:

(a) On the fifteenth day of January and on the fifteenth day of July in each of the years 1930, 1931, 1932 and 1933 a sum sufficient to redeem on the next ensuing interest payment date One Hundred Thousand Dollars ($100,000.00) principal amount of the bonds issued hereunder;

(b) On the fifteenth day of January and on the fifteenth day of July in the year 1934 a sum sufficient to redeem on the next ensuing interest payment date One Hundred Fifty Thousand Dollars ($150,000.00) principal amount of the bonds issued hereunder;

(c) On the fifteenth day of January and on the fifteenth day of July in the year 1935 a sum sufficient to redeem on the next ensuing interest payment date Two Hundred Thousand Dollars ($200,000.00) principal amount of the bonds issued hereunder;

(d) On the fifteenth day of January and on the fifteenth day of July in the year 1936 a sum sufficient to redeem on [fol. 187] the next ensuing interest payment date Two Hundred Fifty Thousand Dollars ($250,000.00) principal amount of the bonds issued hereunder.

Each sinking fund payment shall be applied by the Trustee towards the purchase in the open market of the requisite amount of bonds, as above provided, at such prices as the Trustee may think reasonable, not exceeding the current redemption price, preference being given to the bonds offered at the lowest price or prices. Such moneys shall be paid out by the Trustee in such purchases as the same are from time to time made by it and upon delivery to the Trustee of the bonds so purchased, with all unmatured coupons thereto appertaining. If within fifteen (15) days after any such sinking fund payment shall have been made the Trustee shall have been unable to so purchase in full the requisite amount of bonds, then the Trustee shall use the amount remaining in the sinking fund, so far as needful, to redeem sufficient bonds to make up the required amount, in accordance with the provisions of Section 1 of this Article, but in any such case notice of such redemption may be given by the Trustee.

The delivery by the Company to the Trustee for cancellation on any sinking fund payment date of bonds outstanding hereunder, with all unmatured coupons thereto attached, shall be deemed equivalent to the deposit of funds for their redemption, and the amount of bonds required to be purchased or redeemed through the sinking fund in that year shall be correspondingly reduced. If after the retirement of the requisite amount of bonds in any year any balance

remains in the sinking fund, it shall be paid over to the Company. All bonds purchased, redeemed or delivered by the Company to the Trustee under the provisions of this Sec- [fol. 188] tion shall be forthwith cancelled and shall not be reissued. All moneys in the sinking fund shall, until used and applied as herein provided, be held by the Trustee as security for the payment of the bonds from time to time outstanding hereunder.

Article IV

Section 1. The Company covenants that while any bonds are outstanding hereunder (a) the total outstanding funded debt of the Company, as defined in Section 3 of this Article, shall never be more than two-thirds of the gross worth of the Company as defined in Section 2 of this Article, and (b) the total outstanding debt of the Company (both funded and unfunded) shall always be at least Seven Million, Five Hundred Thousand Dollars ($7,500,000.00) less than such gross worth.

Sec. 2. The term "gross worth of the Company" shall be deemed to be an amount arrived at by adding together (a) cash on hand and/or in bank to the credit of the Company and (b) all other assets (herein called "capital assets"), reckoned at cost, owned by the Company on December 31, 1926, or thereafter acquired by it; and deducting from the total the cost of any capital assets disposed of or which shall have become worthless after December 31, 1926, subject, however, to the following special provisions.

1. Irrespective of the actual cost thereof, for all the purposes of this Section, (a) the shares of stock owned by the Company on December 31, 1926, in American Trust and Safe Deposit Company, a corporation of the State of Illinois, shall be deemed to have cost the sum of $900,000 and [fol. 189] (b) the shares of stock owned by the Company on December 31, 1926, in 345 Madison Avenue, Inc., a corporation of the State of New York, shall be deemed to have cost the sum of $475,000.

2. If old capital assets are exchanged for new capital assets, the cost of the new shall be deemed to equal the cost of the old, less any cash received in addition and/or plus any cash paid and/or obligations issued or assumed in con-

nection with such exchange or to which the new assets are subject in addition, as the case may be.

3. In computing the cost of capital assets there shall be included all sums expended and/or owing and/or incurred for, or in connection with the acquisition of, such capital assets, including obligations assumed or delivered as a part of the purchase price or subject to which any such capital assets shall have been purchased or acquired.

4. In case of the disposition of a portion only of capital assets acquired for a gross cost, such cost shall be equitably apportioned by the Board of Directors of the Company between the assets disposed of and the assets retained.

Sec. 3. As used in this Indenture, the term "funded debt" shall mean all indebtedness created or assumed by the Company or subject to which the Company shall have acquired any capital assets, except indebtedness maturing in one year or less from the date on which it was so created or assumed or on which the capital assets subject thereto were so acquired by the company; and the term "unfunded debt" shall [fol. 190] be deemed to mean and include all indebtedness of the Company except funded debt.

Sec. 4. The Company covenants that within thirty (30) days after it shall have created any funded debt (other than that represented by bonds outstanding hereunder) it will file with the Trustee a statement, signed and verified by the President or a Vice-President and the Treasurer or an Assistant Treasurer of the Company, setting forth in reasonable detail the funded debt so created and setting forth in like detail facts sufficient to show that by the creation of such funded debt no breach of the provisions of Section 1 of this Article has occurred. With each such statement there shall be filed a balance sheet of the Company, as of the latest available date, showing the assets and liabilities of the Company before the creation of such funded debt, and a pro forma balance sheet of the Company showing such assets and liabilities after giving effect to the financing involved in the creation of such funded debt, each such balance sheet to be signed by the Treasurer or an Assistant Treasurer of the Company.

Sec. 5. The Company covenants that it will duly and punctually pay the principal of and interest on every bond

issued hereunder and secured hereby, at the dates and place or places and in the manner specified in such bond, or in the coupons thereunto appertaining, according to the true intent and meaning thereof. The interest on coupon bonds to the date of their fixed maturity shall be payable only in accordance with and upon presentation of the several coupons for such interest as they respectively mature, and, when paid, such coupons shall forthwith be cancelled. The Company also agrees to pay interest at the rate of six and one-[fol. 191] half per centum per annum on all overdue principal and/or installments of interest in respect of each bond issued hereunder. The Company covenants that it will not directly or indirectly assent to the extension of the time for the payment of any coupon or claik for interest on any bond issued hereunder, and that it will not directly or indirectly be a party to or approve of any arrangement for any such extension by purchasing any such coupon or claim or in any other manner.

Sec. 6. The Company covenants that it will keep an office or agency in the City of Chicago, Illinois, while any bonds issued hereunder are outstanding, where notice, presentation and demand to or upon the Company in respect of said bonds or their coupons or this Indenture may be given or made, and for the payment of the principal of such bonds and the interest thereon. The Company will from time to time give the Trustee written notice of the location of such office or agency, and in case the Company shall fail to maintain such office or agency or to give to the Trustee written notice of the location thereof, any such notice, presentation or demand in respect of any such bond or coupon or this Indenture may be given or made at the office of the Trustee in the City of Chicago, Illinois.

Sec. 7. The Company covenants and agrees that it will, at any and all times upon the written request of the Trustee, (a) furnish to it, in such manner as may reasonably be required, a statement or statements in writing showing accurately the financial condition of the Company, with detailed information as to its assets and liabilities and its earnings and operating expenses and all other charges [fol. 192] against income, and (b) permit the Trustee, by clerks, agents or auditors for that purpose duly authorized, to inspect the books, accounts, papers, documents and

memoranda of the Company, and to take therefrom such extracts as may be deemed expedient; and the Company further covenants that it will on or before the first day of April in each year (commencing with the year 1928) file with the Trustee a complete audit made by an independent accountant or accountants showing in reasonable detail the financial condition of the Company as of the 31st day of December next preceding, and the earnings, expenses, interest charges and other charges against income for the twelve (12) calendar months ending on said date, and specifically showing in reasonable detail the current assets and current liabilities of the Company.

Sec. 8. The Company, from time to time, on written demand of the Trustee, shall make, execute, acknowledge and deliver all such further and supplemental instruments, and will take all such further action, as may be reasonably required to effectuate the intention of these presents and to provide for the payment of said bonds and the interest thereon, according to the intent and purposes herein expressed.

Sec. 9. The Company covenants that it will:

(a) Pay all taxes, assessments, imposts and governmental charges lawfully imposed upon its property, or any part thereof, or which may be assessed in respect of income or profits, subject only to its right in good faith to contest by legal proceedings any such tax, assessment, impost or governmental charge, and pending such contest to delay payment thereof, unless such delay would result in the for- [fol. 193] feiture or sale of any part of its property:

(b) Pay, or (subject to the provisions of Section 1 of this Article) extend or renew, at or before maturity, each and all of its indebtedness now existing or hereafter to be incurred, and comply with all covenants, conditions and provisions of every instrument securing any such indebtedness:

(c) Procure, keep, maintain and renew from time to time all such rights, franchises and privileges as may be necessary to effectively carry on its business in an efficient manner:

(d) Maintain and preserve its charter and corporate organization, and its right to carry on business in each state

where any of its property may be located, and to that end procure from time to time all necessary renewals, extensions and/or reincorporations:

(e) Comply with all valid laws, ordinances, regulations and requirements applicable to it or its property; and

(f) At all times keep insured in responsible insurance companies, or by maintaining adequate insurance reserves, such of its property provided for use in connection with its business as is usually insured by companies carrying on like business, and in the same manner and to the same extent.

Sec. 10. Upon written application the Company will reimburse to any holder of any bond issued hereunder any Pennsylvania, Vermont and/or Connecticut personal property taxes not exceeding four mills per annum, and/or any District of Columbia and/or Michigan personal property [fol. 194] taxes not exceeding five mills per annum, and/or any Iowa personal property tax not exceeding six mills per annum, on each dollar of the principal amount of such bond held by him which may be lawfully assessed upon such holder as a resident of any such Commonwealth or State by reason of his ownership thereof and paid by him, and will also reimburse to any holder of any bond issued hereunder any income tax levied or assessed by the Commonwealth of Massachusetts or the State of New Hampshire against such holder as a resident of such Commonwealth or State in respect of the interest on such bond, but not in excess of six per centum of such interest, provided that in each and every case application for such reimbursement shall be made to the Company at its office or agency in the City of Chicago, Illinois, within sixty days after the payment of such tax, and in any event not later than six months after such tax shall have become due and payable, and that such application shall set forth the ownership by the applicant of the bond involved, together with the number thereof, the residence of the applicant at the time said tax was assessed upon and paid by him because of the ownership by him of such bond, and such further facts with respect to the legal liability of such owner to pay such tax as the Company may reasonably require; and provided further, that the Company shall not theretofore have paid to such Commonwealth or State, or to any municipality or

other political subdivision thereof, the amount of such applicable tax. The Company shall in no event be liable to reimburse such holder of any interest or penalty assessed upon or paid by him in addition to such tax or taxes originally assessed.

[fol. 195] Sec. 11. The Company covenants that it is duly authorized under the laws of the State of Maine and all other applicable provisions of law to create and issue said bonds and to execute this Indenture, and that all corporate action on its part for the creation and issue of said bonds and the execution of this Indenture has been duly and effectively taken; and that said bonds in the hands of holders thereof are and will be valid and enforceable obligations of the Company in accordance with their terms and that this Indenture is and always will be a valid instrument for the benefit of the holders of said bonds.

Sec. 12. The Company covenants that it will not go into voluntary bankruptcy or insolvency, or, without the written approval of the Trustee, apply for or consent to the appointment of a receiver of itself or of its property, or make any general assignment for the benefit of its creditors, or suffer any order for the appointment of a receiver of itself or of its property, or adjudicating it to be a bankrupt or insolvent, to be made and remain in effect for a period of more than sixty days, or allow any final judgment to be entered against it and not discharge the same or secure a stay with respect thereto or appeal therefrom or from the order, decree or process upon which or pursuant to which it was granted, within the time allowed by law for such appeal.

Sec. 13. The Company covenants that it will not make, or cause to be made, any sale or contract for the sale of all or substantially all of its properties and franchises to, [fol. 196] or any contract or agreement for the operation thereof by, or any consolidation or contract for consolidation with, any other corporation, unless it be a condition of any such sale, contract or consolidation that the purchaser, assignee, or successor in interest of the Company, or the consolidated company, as the case may be, shall and will pay said bonds and interest coupons, according to the terms thereof and of this Indenture, and shall and will, in

all respects, comply with and perform the terms of this Indenture to be performed by the Company, and assume all of the obligations of the Company hereunder.

Article V

Section 1. No coupon belonging to any bond issued hereunder, which in any way, at or after maturity, shall have been transferred or pledged separate or apart from the bond to which it relates (unless it be accompanied by such bond), and no coupon which shall in any manner have been kept alive after maturity by extension or by the purchase thereof on behalf of the Company, shall be entitled, in case of a default hereunder, to any benefit of or from this Indenture, except after the prior payment in full of all bonds outstanding hereunder and of all coupons not so transferred, pledged or kept alive.

Section 2. In case default shall be made (a) in the payment of any interest on any bond or bonds issued hereunder and outstanding and such default shall continue for a period of sixty days; or (b) in the due observance or performance of any other covenant, condition or agreement herein contained to be observed or performed by the Com- [fol. 197] pany, and any such default shall continue for a period of sixty days after written notice from the Trustee to the Company, then, and in every such case, the Trustee may, and upon the written request of the holders of twenty-five per centum in amount of all the bonds issued hereunder and then outstanding, shall, by notice in writing delivered to the Company, declare the principal of all the bonds issued hereunder and then outstanding to be due and payable immediately; and upon such declaration the same shall become and be due and payable immediately, anything in this Indenture, or in said bonds, to the contrary notwithstanding.

This provision, however, is subject to the condition that if, at any time, the principal of said bonds shall have been declared due and payable, and all arrears of interest upon such bonds, with interest on the overdue installments of interest at the rate of six and one-half per centum per annum, shall either be paid by the Company or be collected

from the Company before any proceeding commenced by the Trustee shall have progressed to final judgment or decree, and all the other covenants and agreements herein contained shall have been performed by the Company or their performance shall have been waived, and all expenses or liabilities incurred by reason of any action taken by the Trustee upon account of any such default shall either have been paid or secured to the satisfaction of the Trustee, then, and in every such case, the holders of a majority in amount of the bonds issued hereunder and then outstanding, by written notice to the Company and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

[fol. 198] Sec. 3. In case (a) default shall be made in the payment of the principal of any bond or bonds issued hereunder and outstanding; or in case (b) default shall be made in the payment of any interest on any bond or bonds issued hereunder and outstanding and such default shall continue for a period of sixty days; or in case (c) default shall be made in the due observance or performance of any other covenant, condition or agreement hereby required to be observed or performed by the Company, and any such default shall continue for a period of sixty days after written notice from the Trustee to the Company, then, and in every such case, the Trustee may, and upon the written request of the holders of one-fourth in amount of all the bonds then outstanding hereunder, and upon being first indemnified to its satisfaction, shall, proceed by or in such suit or suits at law or in equity, or otherwise, as the Trustee may be advised by counsel, to enforce specific performance of this Indenture, or of any promise, covenant or condition contained herein, or in said bonds, or to enforce payment of the principal or interest, or both, of said bonds, or to obtain judgment or any other relief whatsoever appropriate to the action or proceeding, and to issue execution thereof, and to cause the properties and franchises of the Company to be sold under judgment or decree of court. The Trustee shall be at liberty to choose such form of action or proceeding under this Section as, under advice of counsel, it shall deem appropriate.

Sec. 4. All amounts collected by the Trustee in respect of said bonds or of the interest thereon, whether under judg-

ment or decree in suits or proceedings instituted by the [fol. 199] Trustee, or otherwise howsoever, shall be for the equal pro rata benefit of the holders of all the outstanding bonds and the interest coupons thereon, and such net amounts shall from time to time be applied by the Trustee to the payment, first, of the compensation and expenses of the Trustee, its agents and attorneys, and next, (1) if the principal of said bonds shall not have become or been declared due, to the payment of the interest in default in the order of maturity, with interest on the overdue installments of interest at the rate of six and one-half per centum per annum, ratably and without preference or priority of any kind, or (2) if the principal of all of said bonds shall have become or been declared due, to the payment of the principal of and interest on said bonds ratably to the holders thereof, without preference of principal over interest, or of interest over principal, or of any installment of interest over any other installment, subject in either case, to the provision of Section 1 of this Article.

Sec. 5. All rights of action on or because of said bonds and interest coupons, or any of them, or under this Indenture, except as hereinafter otherwise provided, are hereby expressly declared to be vested exclusively in the Trustee, and such rights may be enforced by the Trustee without the possession of any such bonds or interest coupons. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, and any recovery or judgment shall be for the pro rata benefit of the holders of said bonds or interest coupons, or both, as hereinbefore provided. No holder of any such bond or interest coupon shall have any right to institute any suit, action or proceeding for the [fol. 200] enforcement of the terms of this Indenture, or of such bonds or interest coupons, or any of them, without first giving to the Trustee written notice of the fact that default has occurred and continued beyond the period of grace, if any, herein provided in respect thereof, nor unless the holders of one-fourth in amount of the then outstanding bonds shall have requested the Trustee in writing, and shall have afforded to it reasonable opportunity, to institute such action, suit or proceeding in its own name, and shall have offered satisfactory indemnity to the Trustee, and the Trustee shall have neglected or refuse- so to do.

Sec. 6. In case there shall be any existing judgment against the Company unsatisfied or unsecured by bond on appeal for sixty days after demand from the Trustee that it be paid or secured by such bond; or in case the Company shall make any assignment for the benefit of its creditors or be dissolved or go into voluntary liquidation; or in case in any judicial proceeding a receiver, or an assignee, or a trustee in bankruptcy, shall be appointed of the Company (and any such receiver shall not be discharged within sixty days after his appointment), or a judgment or order shall be entered for the sequestration of its property; or in case the substantial or greater part of its property shall be seized under any writ of attachment, or other legal process, and it shall not, within sixty days after a request from the Trustee to do so, cause such property to be released or discharged therefrom by giving bond or otherwise; then, and in every such case, the Trustee shall be entitled forthwith to exercise the rights and powers conferred by this Indenture, in like manner and with like effect as though de- [fol. 201] fault had occurred and continued as hereinbefore provided.

Sec. 7. In case the Trustee shall have commenced proceedings to enforce any right under this Indenture, by action at law or in equity or otherwise, and such proceedings shall have been discontinued or abandoned because of any waiver, or for any other reason or shall have been determined adversely to the Trustee, then, and in every such case, the Company and the Trustee shall be restored to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Trustee and the Company shall continue as though no such proceedings had been taken.

Sec. 8. The Company, for itself, its successors and assigns, hereby agrees to waive, and does hereby absolutely and irrevocably waive and relinquish, the benefit and advantage of any and all valuation, stay, appr-isement, extension or redemption law or laws, now existing, or which may hereafter be passed, which, but for this provision, agreement and waiver, might be applicable to any sale made under the judgment, order or decree of any court or courts based on any of the said bonds or interest coupons or this Indenture; and the Company for itself, its successors and assigns, hereby agrees to waive, and does absolutely and

irrevocably waiver, any and all rights of redemption which it might or could otherwise have or be entitled to under any present or future laws upon, or after, or in respect of, any sale of the premises, properties, rights and franchises of the Company, or any part thereof; and the Company hereby agrees that it, its successors and assigns, will not in any manner set up or seek to take any benefit or advantage of any such present or future valuation, stay, appraisement, extension or redemption of law, to prevent [fol. 202] or hinder or delay such absolute and irredeemable sale of said premises, properties, rights and franchises hereinbefore authorized to be made as might, but for such law, be directed or decreed by a court of competent jurisdiction.

Sec. 9. All remedies specially conferred on the Trustee under this Indenture shall be deemed cumulative and not exclusive. And no delay or omission of the Trustee, or of any holder of the bonds issued hereunder, to exercise any right or power accruing upon any default as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein; and every power and remedy given by this Article may be exercised from time to time and as often as may be deemed expedient.

Article VI

No recourse under or upon any obligation, covenant or agreement contained herein, or in any of said bonds or coupons, or because of the creation of any indebtedness evidenced thereby or hereby, shall be had against any past, present or future incorporator, stockholder, officer or director of the Company, or of any successor corporation, either directly or through the Company, by the enforcement of any assessment or penalty, or by any legal or equitable proceeding by virtue of any statute or otherwise; it being especially agreed and understood that this Indenture, and said bonds and interest coupons, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, incorporators, stockholders, officers or directors of the Company, or of any successor corporation, or any of them, because of the incurring of [fol. 203] the indebtedness hereby authorized, or under or

by reason of any of the obligations, covenants or agreements contained herein, or in any of said bonds or interest coupons, or implied therefrom; and that any and all personal liabilities of every name and nature of, and any and all rights and claims against, every such incorporator, stockholder, officer or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of this Indenture, and the issuing of the bonds and interest obligations herein provided for.

Article VII

If, when the bonds issued and outstanding hereunder shall have become due and payable (whether by lapse of time or by declaration or by the exercise of the privilege of redemption), the Company shall well and truly pay, or cause to be paid, the whole amount of the principal moneys and interest due upon all of the bonds and coupons issued hereunder then outstanding, or shall provide for such payment by depositing with the Trustee hereunder for the payment of such bonds and coupons the entire amount then due thereon for principal and interest, and if the Company shall also pay, or cause to be paid, all other sums payable hereunder by the Company, according to the true intent and meaning of this Indenture, then and in that case this Indenture shall cease and determine, and the Trustee shall satisfy and cancel the same. The deposit with the Trustee of the sums necessary to pay said bonds and coupons, as aforesaid, shall, as to the Company, amount to a payment thereof, and shall discharge the liability of the Company thereon.

[fol. 204]

Article VIII

The Trustee, for itself and its successors, hereby accepts the trusts and assumes the duties herein created and imposed upon it, but only upon the following terms and conditions, to wit:

(a) The Trustee shall be protected in any action taken by it upon any notice, resolution, vote request, consent, certificate, affidavit, statement, bond or other paper or

document believed by it to be genuine and to have been passed or signed by the proper parties.

(b) The Trustee may select and employ in and about the execution of this trust suitable agents and attorneys, whose reasonable compensation shall be paid to the Trustee by the Company, or, in default of such payment, shall be a charge upon any moneys collected or received by the Trustee, paramount to said bonds.

(c) The Trustee, save for its gross negligence or wilful default, shall not be personally liable for any loss or damage.

(d) This Indenture need not be recorded, registered or filed by the Trustee.

(e) The Trustee shall not be liable for the exercise of any discretion or power hereunder, or for mistakes or errors of judgment, nor otherwise in connection with this trust, except for its wilful misconduct or gross negligence.

(f) The Trustee shall not be obliged to take notice of any default until it has received written notice thereof, signed by the holders of such proportion as it hereinbefore [fol. 205] specified of the bonds outstanding hereunder.

(g) The Trustee may advise with legal counsel and shall be protected in respect of any action under this Indenture taken in good faith by the Trustee in accordance with the opinion of counsel.

(h) The Trustee shall have a first lien upon all moneys at any time collected or received by it, for its reasonable expenses, counsel fees and compensation, and for all liabilities incurred in and about the execution of the trust hereby created, and the exercise and performance of its powers and duties hereunder, which expenses, counsel fees and compensation the Company covenants and agrees to pay on demand.

(i) The Trustee shall be under no obligation or duty to perform any act hereunder, or to defend any suit in respect hereof, unless reasonably indemnified. Excepting as herein expressly otherwise provided, the Trustee shall not be bound to recognize any person as a bondholder unless and until his bonds are submitted to the Trustee for In-

spection, if required, and his title satisfactorily established, if disputed.

(j) The Trustee hereunder or any corporation in which it may be interested or any officer, stockholder or director of the Trustee or of any such corporation in its or his individual capacity may from time to time purchase, acquire, hold, own and deal in any of the bonds issued hereunder, and assert rights in respect thereof, in the same manner as any other holder of such bonds, or may engage in or be interested in any financial or other transaction [fol. 206] with the Company or any corporation in which the Company may be interested, with the same rights which it or he would have if the Trustee were not trustee hereunder.

(k) In case at any time it shall be necessary or proper for the Trustee or its successor or successors, to make any investigation respecting any fact preparatory to taking or not taking any action or doing or refraining from doing any thing under this Indenture as such Trustee, the certificate of the Company, under its corporate seal, signed and sworn to by its President or a Vice-President, and its Secretary or an Assistant Secretary, shall be sufficient evidence of such fact to protect the Trustee, or its successor or successors, in any action it or they may take or refrain from taking by reason of the supposed existence of such fact

(l) The Trustee makes no representation in respect of, and shall not be responsible in any manner whatsoever for, the validity, legality, execution or sufficiency of this Indenture or of any of the bonds issued hereunder or of the recitals herein or in such bonds contained, all such recitals being made by and to be taken as statements of the Company solely, or for any action or thing done, ordered or permitted by reason of any representation made by the Company or any of its officers or agents; nor shall the Trustee be accountable or responsible for the use of any bonds authenticated and delivered hereunder, or for the application of the proceeds of such bonds, or for the performance or fulfillment of any covenant or agreement herein provided to be kept by the Company.

[fol. 207] Article IX

Section 1. The Trustee, and any successor trustee hereunder appointed, may resign and be discharged from the trust hereby created by giving to the Company notice in writing of such resignation and by publication of such notice at least once a week for four successive weeks in a daily newspaper published in the City of Chicago, Illinois, and in a daily newspaper published in the Borough of Manhattan, in the City and State of New York. Such resignation shall take effect on the day specified in such notice, unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Section 2. In case at any time the Trustee shall resign, or shall be removed, or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in amount of the bonds issued hereunder and then outstanding, by an instrument or concurrent instrument signed by such bondholders, or their attorneys in fact duly authorized; provided, nevertheless, and it is hereby agreed and declared, that in case at any time there shall be a vacancy in the office of trustee hereunder, the Company, by an instrument executed by order of its Board of Directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. The Company shall publish a notice of any such appointment once in each week for four successive weeks in a daily newspaper published in the City [fol. 208] of Chicago, Illinois, and in a daily newspaper published in the Borough of Manhattan, in the City and State of New York; and any new trustee appointed by the Company shall immediately and without further act be superseded by a trustee appointed by the bondholders in the manner above provided. If neither the Company nor the bondholders shall appoint a successor trustee within a reasonable time, any such appointment may be made by any court of competent jurisdiction upon application of any bondholder or the Trustee last in office. The Trustee hereunder, whether appointed by the bondholders or by the Company or by the decree of any court, shall always

be a trust company or bank in good standing, having a capital and surplus aggregating at least One Million Dollars, if there be such a trust company or bank willing and able to accept the trust upon reasonable or customary terms.

Any new trustee appointed hereunder shall execute, acknowledge and deliver to the trustee last in office, and also to the Company, an instrument accepting such appointment hereunder and thereupon such new trustee, without any further act, shall become vested with all the estates, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein.

Sec. 3. Any corporation or bank into which the Trustee or any successor to it in the trust created by this Indenture may be merged or converted, or with which it or any successor to it (or corporation into which it may be converted) may be consolidated, or any corporation resulting from [fol. 209] any merger, conversion or consolidation to which the Trustee or any successor to it (or corporation into which it may be converted) shall be a party, shall be successor trustee under this Indenture without the execution or filing of any paper or any further act on the part of either of the parties hereto, anything herein to the contrary notwithstanding.

Article X

Section 1. Any request or other instrument required by this Indenture to be signed and executed by holders of bonds issued hereunder may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person, or by an agent or attorney appointed by any instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney or of the holding by any person of bonds, shall be sufficient for any purpose of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under or pursuant to such request or other instrument in writing, if made in the following manner, viz:

(a) The fact and date of the execution by any person of any such request or of any instrument or writing may

be proved by the certificate of any notary public or other officer authorized to take, either within or without the State of Illinois, acknowledgments of deeds to be recorded in said State, certifying that the person signing such request or other instrument or writing acknowledged to him the [fol. 210] execution thereof or by the affidavit of a witness of such execution;

(b) The amount of bonds held by any person executing any such request or other instrument or writing as a holder of bonds and the issue number of the bonds held by such person and the date of his holding the same may be proved by a certificate executed by any trust company, bank, banker or other depositary wheresoever situated whose certificate shall be deemed by the Trustee to be satisfactory, showing that, at the date therein mentioned, such person had on deposit with such depositary or exhibited to such depositary the bonds numbered and described in such a certificate.

The ownership of registered bonds shall be established solely by the Company's register or registers.

Sec. 2. Any action taken by the Trustee pursuant to any provision of this Indenture upon the request or with the consent of any person who at the time is the owner of any bond or bonds shall be conclusive and binding upon all future owners of the said bond or bonds.

Article XI

Section 1. All of the covenants, stipulations, promises, undertakings and agreements herein contained, by or on behalf of the Company, shall bind its successors and assigns, whether so specified or not. For all purposes of this Indenture, the term "Company" includes and means not only the party of the first part hereto, but also its successor or successors in interest who may succeed to the [fol. 211] obligations hereunder by virtue of the terms of this Indenture or by operation of law.

Sec. 2. The word "Trustee" means the Trustee for the time being, whether original or substituted. The word "bond," "holder," and "bondholder" shall include the plural as well as the singular number, and shall include any corporation or association owning any of said bonds.

The word "coupons" refers to the coupons attached to the bonds issued hereunder. The word "bondholder" shall include the owner of a registered coupon bond.

In witness whereof the said American Bond and Mortgage Company, has caused this Indenture to be signed in its name and behalf by its President, and its corporate seal to be hereunto affixed and to be attested by its Secretary; and Chicago Title and Trust Company, to evidence its acceptance of the trust hereby created, has caused this Indenture to be signed in its name and behalf by its Vice President, and its corporate seal to be hereunto affixed and to be attested by its Ass't Secretary, all on the day and year above written.

American Bond and Mortgage Company, by Wm. J. Moore, President, American Bond & Mortgage Company. Attest: Kenneth W. Moore, Secretary. (Corporate Seal, A. D. 1910, Augusta, Maine.)

Executed, signed, sealed and delivered by American Bond and Mortgage Company, in the presence of:

M. F. Barckley, I. G. Brenneman, Witnesses.

Chicago Title and Trust Company, by M. J. Kautzky, Vice-President, Chicago Title & Trust Company. Attest: E. Trageger, Asst. Secretary. (Corporate Seal, Chicago, Illinois.)

Executed, signed, sealed and delivered by Chicago Title and Trust Company in the presence of:

Charles Carroll, O. J. Olsen, Witnesses.

[fol. 212] State of Illinois,
County of Cook, ss:

I, Franklyn E. Miller, a Notary Public in and for said county, in the state aforesaid, do hereby certify that on this day personally appeared before me Wm. J. Moore and Kenneth W. Moore, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and personally known to me to be the President and Secretary, respectively of American Bond and Mortgage Company, and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act as such President and Secretary, respec-

tively and as the free and voluntary act of said American Bond and Mortgage Company, for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and affixed my notarial seal, this 26th day of March, A. D. 1927.

My commission expires April 10, 1929.

Franklyn E. Miller, Notary Public, Cook County, Illinois. (Seal of Franklyn E. Miller, Notary Public, Cook County, Ill.)

[fol. 213] STATE OF ILLINOIS,
County of Cook, ss:

I, C. Lange, a Notary Public in and for said county, in the state aforesaid, do hereby certify that on this day personally appeared before me M. J. Kautsky, and E. Traeger, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and personally known to me to be the Vice-President and Ass't. Secretary, respectively, of Chicago Title and Trust Company, and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act as such Vice-President and Ass't. Secretary, respectively, and as the free and voluntary act of said Chicago Title and Trust Company, for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and affixed my notarial seal, this 28th day of March A. D. 1927.

My commission expires 1/23/28.

C. Lange, Notary Public, Cook County, Illinois. (Seal of C. Lange, Notary Public, Cook County, Ill.)

[fol. 214] STATE OF NEW YORK,
County of New York, ss:

Claude E. Trinder, being duly sworn, deposes and says: That he is the Second Vice-President of Royal Indemnity Company, one of the petitioners named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by the aforesaid Royal Indemnity Company is that the

said Royal Indemnity Company is a corporation and deponent is an officer thereof, to wit, its Second Vice-President.

Claude E. Trinder.

Sworn to before me this 18th day of May, 1931. My commission expires 3/30/32. Cert. filed in N. Y. Co. #286. Howard Myers, Notary Public, Westchester County. (Seal.)

[fol. 215] State of New York,
County of Westchester, ss:

Lucy G. Adamson, being duly sworn, deposes and says: That she is one of the petitioners named in the foregoing petition; that she has read the same and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters she believes it to be true.

Lucy G. Adamson.

Re Sworn to before me this 23 day of May, 1931. Howard Myers, Notary Public, Westchester County. (Seal.)

[fol. 216] State of New York,
County of Albany, ss:

Frances C. Losee, being duly sworn, deposes and says: that she is one of the petitioning creditors named in the foregoing petition; that she has read the same and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters she believes it to be true.

Frances C. Losee.

Re Sworn to before me this 23 day of May, 1931. Marjorie M. Mason, Notary Public, Albany County.

[fol. 217] State of New York,
County of Albany, ss:

Dr. M. A. Losee, being duly sworn, deposes and says: that he is one of the petitioning creditors named in the

foregoing petitions; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

Dr. M. A. Losee.

Re Sworn to before me this 23 day of May, 1931.
Marjorie M. Mason, Notary Public, Albany County.

[fol. 218] State of New York,
County of Albany, ss:

Parkes D. Wendell, being duly sworn, deposes and says: that he is one of the petitioning creditors named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

Parkes D. Wendell.

Re Sworn to before me this 23 day of May, 1931.
Marjorie M. Mason, Notary Public, Albany County.

[fol. 219] State of New York,
County of Albany, ss:

Jessie H. Owens, being duly sworn, deposes and says: that he is one of the petitioning creditors named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

Jessie H. Owens.

Re Sworn to before me this 23 day of May, 1931.
Parkes D. Wendell, Notary Public, Albany County.

[fol. 220] State of New York,
County of Albany, ss:

Agnes E. Larkin, being duly sworn, deposes and says; that she is one of the petitioning creditors named in the foregoing petition; that she has read the same and knows

the contents thereof; that the same is true of her own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters she believes it to be true.

Agnes E. Larkin.

Re Sworn to before me this 23 day of May, 1931.
Parkes D. Wendell, Notary Public, Albany County.

[fol. 221] STATE OF NEW YORK,
County of Albany, ss:

Daniel Larkin, being duly sworn, deposes and says: that he is one of the petitioning creditors named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

Daniel Larkin.

Re Sworn to before me this 23 day of May, 1931.
Parkes D. Wendell, Notary Public, Albany County.

[fol. 222] STATE OF NEW YORK,
County of Albany, ss:

Newell Becker, being duly sworn, deposes and says: that he is one of the petitioning creditors named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

Newell Becker.

Re Sworn to before me this 23 day of May, 1931.
Parkes D. Wendell, Notary Public, Albany County.

[fol. 223] STATE OF NEW YORK,
County of Albany, ss:

Ralph W. Eldredge and J. L. Hone, being severally duly sworn, deposes and says: that they are two of the petitioning creditors named in the foregoing petition; that they have read the same and know the contents thereof;

that the same is true of their own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters they believe it to be true.

Ralph W. Eldredge, J. L. Hone.

Re Sworn to before me this 23rd day of May, 1931.
Parkes D. Wendell, Notary Public, Albany County.

[fol. 224] STATE OF NEW YORK,
County of Albany, ss:

Cora Vunck, being duly sworn, deposes and says: that she is one of the petitioning creditors named in the foregoing petition; that she has read the same and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters she believes it to be true.

Cora Vunck.

Re Sworn to before me this 23rd day of May, 1931.
Parkes D. Wendell, Notary Public, Albany County.

[fol. 225] STATE OF NEW YORK,
County of Albany, ss:

Charles M. Winchester, William Lawrie, Minnie C. Bame, S. J. Bennett, and Lloyd S. Cheney, being severally duly sworn, depose and say: that they are five of the petitioning creditors named in the foregoing petition; that they have read the same and know the contents thereof; that the same is true of their own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters they believe it to be true.

Charles M. Winchester, Wm. Lawrie, Winnie C. Bame, S. J. Bennett, Lloyd S. Cheney.

Re Sworn to before me this 23 day of May, 1931.
Parkes D. Wendell, Notary Public, Albany County.

[fol. 226] EXHIBIT "I" TO PETITION

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE

No. —

In the Matter of AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, Alleged Bankrupt

Denial of Bankruptcy

At Portland, in said District on the 15th day of June, A. D. 1931,

And now appears the said American Bond and Mortgage Company, a corporation, and without waiving any rights under its Motion to Transfer heretofore filed, but expressly relying on the same, denies,

(a) That for the greater portion of the six months next preceding the date of the filing of the petition herein it had had its principal place of business in the State of Maine;

(b) That the petitioners named in the said petition filed herein are creditors of the American Bond and Mortgage Company who have provable claims against it;

(c) That it has committed the acts of bankruptcy set forth in said petition;

(d) That it is insolvent;

and avers that it should not be declared bankrupt for any cause in said petition alleged and this it prays may be inquired of by the court.

American Bond and Mortgage Company, by Arthur W. Draper, President.

[fol. 227] STATE OF ILLINOIS,
County of Cook, ss:

Arthur W. Draper, being duly sworn, deposes and says that he is the President of American Bond and Mortgage Company; that he has read the foregoing Denial of Bank-

ruptcy and knows the contents thereof and that the same is true.

Arthur W. Draper. Defrees, Buckingham, Jones & Hoffman, Verrill, Hale, Booth & Ives, Attorneys for the Alleged Bankrupt.

Subscribed and sworn to before me this 12th day of June, 1931. Mary R. Walsh, Notary Public.

[fol. 228] EXHIBIT I-1 TO PETITION

UNITED STATES OF AMERICA:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE, SOUTHERN DIVISION

In the Matter of AMERICAN BOND & MORTGAGE COMPANY, Alleged Bankrupt

American Bond & Mortgage Company, a corporation, alleged bankrupt in the above entitled proceeding, finding that because of the present economic conditions, defaults in securities in which it is financially interested, failure of reorganization plans, and increasing shrinkage of realizable value of its assets, it is unable to pay its debts and that its property should be surrendered for administration under the bankruptcy laws of the United States, withdraws the answer heretofore filed by it herein, but such withdrawal is made without prejudice to its petition to transfer proceedings heretofore filed herein upon which it expressly relies.

American Bond & Mortgage Company, by Verrill, Hale, Booth & Ives, Robert Hale, Bankrupt's Attorneys.

I hereby certify that the above is a true copy.
Attest:

John F. Knowlton, Clerk. (Seal.)

[fol. 229] EXHIBIT "J" TO PETITION

UNITED STATES OF AMERICA:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE, SOUTHERN DIVISION

In the Matter of AMERICAN BOND & MORTGAGE COMPANY, Alleged Bankrupt

Petition to Transfer Proceedings

To the District Court of the United States for the District of Maine, Southern Division:

The petition of American Bond & Mortgage Company, alleged bankrupt, respectfully shows and alleges:

1. That on the 21st day of May, 1931, four days prior to the filing of the petition herein, an involuntary petition in bankruptcy was filed against it in the United States District Court for the Northern Division of Illinois, Eastern Division, and said proceeding is still pending before said Court and no order of adjudication has been entered therein.

2. That for the following reasons the District Court for the Northern District of Illinois, Eastern Division, can proceed to the consideration of affairs of this alleged bankrupt for the greatest convenience of parties in interest; because its principal place of business is and for the preceding six months has been in Chicago in the County of Cook and State of Illinois in said Northern District of Illinois, that its [fol. 230] papers, books of account, records, files, et cetera, are kept in Chicago and that the evidence which would be material to enable the Court to pass upon the question of adjudication is readily accessible in Chicago and is not accessible in this District, that its principal officers, agents and principal attorneys reside in or near Chicago, that it has not assets in this District and the Administration of its affairs, if it were adjudicated a bankrupt would necessarily be carried on from Chicago, that any attempt to administer its affairs in this District would be highly inconvenient and prohibitively expensive and that a great majority in number and amount of its creditors reside at points to which Chicago is far more accessible than Maine.

Wherefore your petitioner prays that this proceeding be transferred to the Northern District of Illinois, Eastern Division, and consolidated with the bankruptcy proceeding in the same matter now pending in said district.

May 27, 1931.

American Bond & Mortgage Company, Petitioner, Verrill, Hale, Booth & Ives, by Robert Hale, Its Attorneys.

[fol. 231] STATE OF MAINE,
County of Cumberland,
City of Portland, ss:

DISTRICT OF MAINE, SOUTHERN DIVISION

Robert Hale, being duly sworn, deposes and says that he is one of the attorneys for the alleged bankrupt, that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge.

Sworn to before me this 27th day of May, 1931.

Charles D. Booth, Notary Public. (Seal.)

[fol. 232] EXHIBIT "K" TO PETITION

UNITED STATES OF AMERICA:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE, SOUTHERN DIVISION

In the Matter of AMERICAN BOND & MORTGAGE COMPANY, Alleged Bankrupt

Answer by Petitioning Creditors in Bankruptcy in the Maine Bankruptcy Proceeding to the Petition of the Alleged Bankrupt to Transfer the Maine Bankruptcy Proceeding to Illinois

Frederick R. Dyer (Portland, Me.), Saul S. Myers (New York), Attorneys for Petitioning Creditors.

Selden Bacon (New York), Ropes, Gray, Boyden & Perkins (Boston), of Counsel.

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[fol. 234] UNITED STATES OF AMERICA:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE, SOUTHERN DIVISION

In the Matter of AMERICAN BOND & MORTGAGE COMPANY, Alleged Bankrupt

Answer by Petitioning Creditors in Bankruptcy in the Maine Bankruptcy Proceeding to the Petition of the Alleged Bankrupt to Transfer the Maine Bankruptcy Proceeding to Illinois

Answering the petition of the American Bond & Mortgage Company for a transfer of this proceeding to the Northern District of Illinois and for its consolidation with

the bankruptcy proceeding in that District, the petitioners in bankruptcy in this proceeding, as respondents to the said petition for transfer and consolidation, respectfully show to this Court:

1. That on the 21st day of May, 1931, at 5 o'clock p. m., on the fourth day prior to the filing of the petition in involuntary bankruptcy in this court in this proceeding, there was filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, a paper purporting to be a petition in involuntary bankruptcy against the said American Bond & Mortgage Company, of which a true copy is hereto annexed, marked Exhibit A, and hereby made a part of this answer. That such petition, Exhibit A hereof, is the petition referred to in paragraph 1 of the said petition of the American Bond & Mortgage Company for transfer and consolidation.

2. Together with said petition in involuntary bankruptcy, Exhibit A hereof, and at the same moment, 5 p. m. on May 21st, 1931, there was also filed in the said District Court of the United States for the Northern District of Illinois, Eastern Division, a paper purporting to be a petition for the appointment of a Receiver in bankruptcy of the said alleged bankrupt, of which petition a true and correct copy is hereto annexed, marked Exhibit B and hereby made a part of this answer. Said petition, Exhibit B hereof, was filed by the same attorneys who filed the petition, Exhibit A hereof; and the petitioner named in said Exhibit B is one of the petitioners named in said Exhibit A. Such petition is, under familiar rulings of the Federal Courts, frivolous on its face.

3. That at the same moment, 5 o'clock p. m., on the 21st day of May, 1931, there was filed in the said District Court of the United States for the Northern District of Illinois, Eastern Division, by an alleged simple contract creditor of the said American Bond & Mortgage Company, a bill in equity against that Company for the appointment of equity receivers of its property and assets, of which bill in equity so filed a true and correct copy is hereto annexed, marked Exhibit C, and hereby made a part of this answer.

4. That the petitioners named in said Exhibit A and their said attorneys had full knowledge and notice of the

[fol. 235] contemporaneous filing of said bill in equity, Exhibit C hereof, at the time they filed the said petitions, Exhibits A and B hereof.

5. That the said petitioners in said Exhibit A and their said attorneys had also full knowledge and notice, as they occurred, of each of the subsequent steps taken under the said bill in equity hereinafter set forth, and throughout neither attempted nor made any opposition to any of them, and acquiesced and still are acquiescing therein, and, on information and belief, consented thereto.

6. That the said American Bond & Mortgage Company on the 22nd day of May, 1931, filed in the said District Court of the United States for the Northern District of Illinois its answer to said bill in equity, of which answer to said bill a true and correct copy is hereto annexed, marked Exhibit D and hereby made a part of this answer.

7. On information and belief, that no process upon the said bill in equity was issued to the defendant therein out of said District Court of the United States for the Northern District of Illinois, or served upon it, and that it appeared and so answered said bill voluntarily.

8. That upon the coming in of the said answer the said District Court of the United States for the Northern District of Illinois, without the said Illinois petitioners in bankruptcy making any objection or any claims that the estate of the defendant in that suit was already in custodia legis by virtue of the filing of their said petition in bankruptcy, or otherwise objecting to the creation of such equity receivership, made and entered its certain decree in said equity suit, of which a true and correct copy is hereto annexed, marked Exhibit E, and is hereby made a part of this answer.

9. That thereupon the plaintiffs in said bill in equity, to-wit, on the 22nd day of May, 1931, filed a further petition in said equity suit, of which a true and correct copy is hereto annexed, marked Exhibit F and hereby made a part of this answer, and thereon, the said Equity Court, on the 22nd day of May, 1931, made and entered its further order and decree, of which a true and correct copy is hereto annexed, marked Exhibit G and hereby made a part of this answer.

10. That on the 26th day of May, 1931, and after the filing of the petition in bankruptcy in this Court against the said American Bond & Mortgage Company, the Chicago Title & Trust Company and Arthur W. Draper, the receivers named in said decrees of May 22nd, 1931, Exhibits E and G hereof, (who had on the 22nd day of May, 1931, qualified as such receivers in accordance with said two decrees), filed their certain petition as such receivers in said Equity Court, of which a true and correct copy is hereto annexed, marked Exhibit H and hereby made a part of this answer; and upon such petition, Exhibit H, said Equity Court, on the 26th day of May, 1931, made and entered its certain order in said equity suit, of which a true and correct copy is hereto annexed, marked Exhibit I, and hereby made a part of this answer.

11. That on the 26th day of May, 1931, said Chicago Title & Trust Company and said Draper, as such receivers, filed their certain further petition in said equity court, of which a true and correct copy is hereto annexed, marked Exhibit J, and hereby made a part of this answer, and on the same 26th day of May, 1931, said Equity Court made its certain further decree thereon in said equity [fol. 236] cause, of which a true and correct copy is hereto annexed, marked Exhibit K, and hereby made a part of this answer.

12. That on the 1st day of June, 1931, the Chicago Title & Trust Company and said Draper, as such receivers, filed their further petition in the said equity court, of which a true and correct copy is hereto annexed, marked Exhibit L, and hereby made a part of this answer. That upon that petition, the said Equity Court, on the 1st day of June, 1931, made and filed its said further order and decree in said equity suit, of which a true and correct copy is hereto annexed, marked Exhibit M, and hereby made a part of this answer.

13. That thereafter, and on the 10th day of June, 1931, the said Chicago Title & Trust Company, as such receivers, made and filed their certain further petition in said court in said equity suit, of which a true and correct copy is hereto annexed, marked Exhibit N, and hereby made a part of this answer. That said Equity Court thereon, on said

11th day of June, 1931, made and entered its certain further decree on such petition, of which decree a true and correct copy is hereto annexed, marked Exhibit O, and made a part of this answer.

14. That since filing the said two petitions, Exhibit A and B hereof, on May 21, 1931, no forward steps whatever, of any character, have been taken by the said petitioners in their said Illinois bankruptcy proceeding.

On the 29th day of May, 1931, the alleged bankrupt filed an answer in the said bankruptcy proceeding in the Northern District of Illinois of which a true and correct copy is hereto annexed, marked Exhibit P, and hereby made a part hereof. That no order of adjudication rel non has been entered upon said petition in bankruptcy, Exhibit A hereof, and answer, Exhibit P hereof, and no such decree or order can be entered thereon under General Order in Bankruptcy No. 6 of the United States Supreme Court, until the petition in bankruptcy so filed in this Court, which these respondents hereby refer to, has been disposed of.

No attempt or application has been made by any of the petitioners in Exhibits A and B hereof to amend either of said petitions.

15. On information and belief, that said petition in bankruptcy, Exhibit A hereof, and said petition for a receiver, Exhibit B hereof, were filed collusively with the filing of said bill in equity, in order to protect the equity receivership and without any intent to prosecute the same, but with the intent and purpose on the part of the several petitioners therein and their attorneys of protecting and sheltering such equity receivership from attack by genias proceedings in bankruptcy. That with that purpose in view, the said petition in bankruptcy in said Illinois proceeding and the petition for a receiver therein were so defectively drawn, as appears on their face, so that after the expiration of four months from the decree in equity establishing such equity receivership, the said Illinois bankruptcy proceeding might be dismissed.

16. With full knowledge and notice that the American Bond & Mortgage Company was going to answer said bill in equity and consent to the appointment of equity receivers, and that such equity receivership upon such bill and answer would be immediately granted, the said peti-

tioner for a bankruptcy receiver in said Chicago proceeding and his attorneys consented to an adjournment of any hearing on the said petition for a receiver in bankruptcy in [fol. 237] the said Illinois bankruptcy proceeding to the 5th day of June, 1931, expecting that meantime such equity receivers would be appointed by the Equity Court.

17. Said Illinois bankruptcy petition, Exhibit A hereof, is fatally defective in these particulars:

A. The jurisdictional allegation that the American Bond & Mortgage Company is a monied, business or commercial corporation is omitted from the said petition in bankruptcy so filed in the District Court of the United States for the Northern District of Illinois, and question arises whether, under said petition, any jurisdiction whatsoever was acquired in said bankruptcy proceeding by the District Court of the United States in the Northern District of Illinois. Such defect has been repeatedly held fatal to the petition and has even been held so far fatal to the jurisdiction, that even if an adjudication were entered thereon it would be void as without jurisdiction and could be disregarded by any other person or court and attacked collaterally for such lack of jurisdiction.

B. The allegations in said Illinois petition, Exhibit A hereof, as to the petitioning creditors are wholly insufficient, and no one of the petitioning creditors is shown by the allegations to be a qualified petitioner.

C. No act of bankruptcy was sufficiently alleged in said petition. There is no allegation of any intent to prefer as to either of the alleged payments said to have been made by the American Bond & Mortgage Company, nor is there any allegation that either of the payees was thereby preferred over other creditors of the same class.

D. The said petition in bankruptcy, Exhibit A, hereof, was not signed by any one of the petitioners therein named and, although it alleges that they are each of them residents in Chicago, which is in the County of Cook, in the State of Illinois, the said petition in bankruptcy, Exhibit A hereof, was not verified by any one of the petitioners, but only by their attorney, in said County of Cook, who makes no excuse for the failure of any of the petitioners to verify

the same and shows no knowledge on his own part of any of the facts, or the sources of any information he has, and who states only "that the matters and things set forth in the petition are true to the best of his knowledge and belief".

E. Mr. Hawxhurst, one of the attorneys for the petitioner in bankruptcy in said Illinois bankruptcy proceeding, stated, in open court, on the 30th day of June, 1931, that the said Illinois petition in bankruptcy was "co-operative" with the bill in equity.

F. By its several decrees and orders in the said equity proceeding, the said District Court of the United States for the Northern District of Illinois, Eastern Division, has declined to entertain the said petition in bankruptcy so filed in that court, and the petitioners in bankruptcy in said bankruptcy proceeding, by their consent thereto and their acquiescence therein, have consented to the rejection of their [fol. 238] said petition, Exhibit A hereof, and, under the decision of the United States Supreme Court in the case of Acme Harvester Company vs. Beekman Lumber Company, the said bankruptcy proceeding so attempted to be instituted in the District Court of the United States for the Northern District of Illinois, Eastern Division, is no longer pending therein, but has been rejected by the court and abandoned by the petitioners in bankruptcy in that proceeding by their consent and acquiescence in the appointment of said equity receivers by that court without any objection on their part thereto, or to the subsequent orders disposing of the property of the estate in derogation of what would have been the legal custody of said property by the bankruptcy court had the said petition in bankruptcy so filed in said Northern District of Illinois been jurisdictional, been valid and honestly intended, or accepted or entertained by that Court.

18. The act of bankruptcy on the part of the alleged bankrupt in procuring the appointment of said Equity receivers of its property by the District Court of the United States for the Northern District of Illinois cannot be asserted or maintained in said Illinois bankruptcy proceeding as it occurred subsequent to the filing of the said petition in bankruptcy, Exhibit A hereof.

19. Except as hereinbefore expressly admitted, each and every allegation contained in paragraph 1 of the said petition of the American Bond & Mortgage Company for transfer of this cause to the District Court of the United States of Illinois and consolidation with the said collusive proceeding there begun, is denied by these respondents.

20. On information and belief, these respondents allege that the said pretended bankruptcy proceeding in the Northern District of Illinois, Eastern Division, was begun by the petitioners therein and their attorneys in collusion with the American Bond & Mortgage Company and with the plaintiffs in said equity bill and with the said Chicago Title & Trust Company and said Draper, who were prior to the filing of such bill respectively agents of the alleged bankrupt and active participants in the pretended acts of bankruptcy asserted in said petition, Exhibit A hereof, and for the purpose of protecting said bill in equity and the appointment of receivers thereunder from any attack by a real bankruptcy proceeding.

21. These respondents deny that the District Court of the United States for the Northern District of Illinois, Eastern Division, can proceed to the consideration of the affairs of the alleged bankrupt with the greatest convenience of the parties in interest other than the bankrupt and those colluding with it to prevent equal distribution of its assets among its creditors according to their several rights.

22. These respondents deny, on their information and belief, that the principal place of business of the alleged bankrupt is or has been in the State of Illinois for the greater part of the six months next preceding the filing of the petition in bankruptcy in this Court on May 25th, 1931, or next preceding the filing of the said pretended petition in bankruptcy in the said Northern District of Illinois on May 21, 1931.

23. These respondents deny, on their information and belief, that the alleged bankrupt did any business in Illinois, during the year 1930, or during the months of January [fol. 239] and February, 1931 and allege, on their information and belief, that the said alleged bankrupt, to-wit: on or about the 17th day of February, 1931, made a report

required by the laws of Illinois, to the State authorities of Illinois, that it had done no business in Illinois in 1930, and had no property there.

24. These respondents admit that the defendant did have an office in the City of Chicago, State of Illinois, in the year 1930, and removed thereto from the City of New York, in the State of New York, where it had its principal place of business, many of its books, records and securities, and placed the latter in the hands of the Chicago Title & Trust Company, but allege, on information and belief, that many of the principal transactions of business by the said alleged bankrupt during the greater part of the six months and ten days next preceding the filing of the petition in bankruptcy in this court, have been transacted in the City of New York, State of New York, in Washington, in the District of Columbia, and in Boston in the State of Massachusetts.

25. These respondents admit that a large number of bonds and certificates of stock belonging to the alleged bankrupt were transported to Chicago, Illinois, in the year 1929 and are now there, but these respondents allege that the legal and real situs of the property represented by said certificates of stock and by said bonds is at the domicile of the said corporation, in the District of Maine, and such bonds and certificates of stock are readily transportable.

26. These respondents admit that many of the papers, books of account, records and files of the said alleged bankrupt have been transported to Chicago by it, and are now there, but allege, on information and belief, that there are also many others in the City of New York; and all such books and records are readily transportable.

27. These respondents allege that one of the most valuable assets of the alleged bankrupt is the claim that should be preferred in its behalf, to an award of about $1,350,000. in cash, above a first mortgage made in payment for the Libby Hotel in the City of New York in condemnation proceedings, over which award there is now pending litigation in New York and over the rights to which other litigation will ensue, which will necessarily be conducted in New York, where claims are made against that award by various persons for services in securing same, amounting

in the aggregate to over $1,000,000., the great bulk of which claims are, as your petitioners are informed and believe, fraudulent and should be contested. Other litigation in connection with that property is apt to arise over the payment of $515,000. to various persons as alleged commissions for securing the loan of $1,500,000. on that Libby Hotel property which litigation will necessarily be conducted in the State of New York.

28. These respondents further show that the claim of the alleged bankrupt to be solvent set up in its answer to the petition in bankruptcy in this proceeding, which is hereby referred to, is predicated on the aforesaid grossly inflated valuation of various stocks and bonds of subordinate real estate corporations, many of them defaulted, the actual value of which stocks and bonds can only be ascertained by testimony to be taken at the places where are situate the properties on which said bonds are liens, or where the property is located represented by said stocks. These respondents further show that the denial in the [fol. 240] answer of the alleged bankrupt to the petition in bankruptcy that the petitioners for the adjudication of bankruptcy are creditors holding provable claims is a negative pregnant with the admission that any number of them less than the whole number of petitioners for adjudication (seventeen), are such creditors. That, of the seventeen, fifteen are the owners and holders of Debenture Bonds of the alleged bankrupt, each of such bonds being in the sum of $500 or more. No serious issue is presented by that defective denial, and if there were, all of such seventeen petitioners reside in the State of New York, as do the witnesses in support of their claims.

The fact that the appointment of the Chicago Title & Trust Company and Mr. Draper as Equity Receivers of the alleged bankrupt on the 22nd day of May, 1931, by the District Court of the United States for the Northern District of Illinois was obtained by the alleged bankrupt joining in the application therefor is conclusively shown by the record of the said District Court of the United States of the Northern District of Illinois in that suit, certified copies of which are annexed to this answer to the petition for transfer. This is an unquestionable act of bankruptcy if the alleged bankrupt were in fact then insolvent within the meaning of the bankruptcy act.

That the alleged bankrupt is and was a Maine corporation and domiciled in this District and a corporation of such character as to be adjudicable a bankrupt on involuntary petition is not attempted to be denied.

The only issue of substance really presented is whether the alleged bankrupt is (and was at the time of the appointment of such Equity receivers) insolvent.

Technically, even this denial seems insufficient, since the allegation that the assets of the alleged bankrupt, at a fair valuation, were insufficient to satisfy its liabilities is not attempted to be denied.

An audit of the assets and liabilities of the alleged bankrupt as of February 28th, 1931, was made under the direction of the Supreme Court of Maine in a suit therein pending to which the alleged bankrupt is a party, by Crosby & Murphy, Accountants and Auditors of Worcester, Massachusetts, in the suit there still pending, and has been filed with that Court.

Annexed hereto, marked Exhibit Q, is a copy of the balance sheet of the alleged bankrupt as of February 28th, 1931, contained in that report, from which report it appears that besides contingent liabilities of an indefinite amount, and liabilities to holders of $6,862,900 of Preferred Stock, (who are generally in a position to rescind their subscriptions and purchases of the stock and claim as creditors for the amounts paid therefor, viz., par of the stock, on the ground of having been misled into such purchases by material written false representations as to the assets and liabilities of the corporation,) the alleged bankrupt showed on its books direct liabilities amounting to $7,482,205.29.

As against these admitted direct liabilities of $7,482,-205.29 the said audit shows assets having a nominal value of $15,138,103.21.

Of these nominal assets of $15,138,103.21, $13,612,918.33 are scheduled as investments and advances to buildings and building companies which are listed in Schedule 1 of that report.

The fair value of certain of these investments and advances will form the main point in the controversy over the issue of solvency or insolvency. The value of such investments is in each instance dependent practically exclusively [fol. 241] on the value of the real estate securing the advances or constituting the asset.

Annexed hereto and marked Exhibit R is a true and correct copy of said Schedule 1 proper (without its supporting schedules) which is hereby made a part hereof.

As to the assets named in that Schedule 1, these respondents expect to establish by definite proofs, as to each of the following items the following facts:

a. That the item No. 1 thereon, Mayflower Hotel Company, put in as an asset at $3,032,321.76 is not and was not at the time of securing the Equity receivership worth at a fair valuation, over $25,000.

The Mayflower Hotel and all substantial assets of that corporation and its bonds are in Washington, D. C., and in the hands of three Receivers there appointed. The witnesses on this subject will be residents of Washington, D. C., primarily real estate and hotel experts, and Washington lawyers familiar with the title and all the proceedings there, and with the rulings already made in court proceedings there in regard to that matter.

b. That the item No. 8 on that Schedule 1, Lincoln Drive Apartments, put in as an asset at $440,910.63 is not and was not at the time of securing the Equity receivership, worth, at a fair valuation over $40,000.

The "Lincoln Drive Apartments" are situated in Philadelphia, Pennsylvania. The principal witnesses as to the value of these securities will be Philadelphia real estate experts, and the books and records of the Lincoln Drive Corporation which is a Pennsylvania corporation with its principal office and place of business in said Philadelphia.

c. That the item No. 4 on that Schedule 1, Longwood Towers (formerly Alden Park Manor of Brookline), put in as an asset at $773,670.28 is not and was not at the time of securing said Equity receivership, worth, at a fair valuation, over $100,000.

The Longwood Towers is a Massachusetts concern with its headquarters in Boston, Massachusetts, in the neighborhood of which City its buildings are situated. The principal witnesses as to the actual value of this asset will be Boston real estate experts, and the books and records of that concern, and its managers who are residents of Boston or that immediate neighborhood.

d. That the item No. 11 on that Schedule No. 1, Pelham Hall Apartments, put in as an asset of $351,792,24 is not and was not at the time of securing said Equity receivership, worth, at a fair valuation, over $210,000.

Said Pelham Hall Apartments is a Massachusetts property situated in or near the City of Boston. The principal witnesses as to the actual value of this asset will be Boston real estate experts and the books and records of that concern which is a Massachusetts concern.

e. That the item No. 15 on that Schedule No. 1, Myles Standish Apartments, put in as an asset at $255,387.27 is not and was not at the time of securing said Equity receivership worth, at a fair valuation, over $55,000.

Said Myles Standish Apartments are situated in or near Boston, Massachusetts, and it is a Boston concern. The principal witnesses as to the actual value of this asset will be Boston real estate experts, and the books and records of this concern, which has its principal place of business in or near Boston, and its managers all of whom reside in or near Boston.

f. That the item No. 27 on that Schedule No. 1, The Hereford, put in as an asset at $78,266.85 is not and was not at the time of securing said Equity receivership, worth at a fair valuation, over $50,000.

[fol. 242] This is an equity in a parcel of real estate in or near Boston, Massachusetts. The principal witnesses as to the real value of this asset are Boston real estate experts.

g. That the item No. 31 on that Schedule No. 1, Roosevelt Apartments, Boston, put in as an asset at $52,996.32, is not and was not at the time of securing said equity receivership, worth, at a fair valuation, over $8,500.

This property consists partially of deferred interests in an apartment house, at or near Boston, Massachusetts, and the principal witnesses to establish its value will be Boston real estate experts, and the books and records of that concern which is a Boston concern.

h. That the item No. 33 on that Schedule No. 1, 250 Beacon Street, put in as an asset, at $49,691.75 is not and was not at the time of securing said Equity receivership, worth, at a fair valuation, more than $7,000. This asset

consists partially of deferred interests in the building at 250 Beacon Street, Boston, Massachusetts, and the principal witnesses to its value will be Boston real estate experts, and the books and records of the owner which is a Massachusetts corporation with its headquarters in the City of Boston, Massachusetts.

i. That the item No. 35 on that Schedule No. 1, The Regent, put in as an asset at $39,072.91 is not and was not at the time of securing said Equity receivership worth, at a fair valuation, in excess of $5,000.

The interest of the alleged bankrupt therein consists in the ownership of the common stock of the owner corporation, Regent Corporation, which is a Massachusetts corporation with offices in Brookline, Massachusetts. Its assets consist of an eight-story apartment house in Brookline, subject to a heavy mortgage, which has been taken possession of by the mortgage bondholders secured thereon under the mortgage thereon and is now being operated by them. The principal witnesses as to the value of this asset are Boston real estate experts, and the books and records of such Massachusetts corporation.

j. That the item No. 5 on that Schedule No. 1, Hudson Towers, put in as an asset at $763,374.91 is not and was not at the time of securing said Equity receivership worth at a fair valuation, any sum whatever.

Said Hudson Towers property was owned by the Alta Vista Terrace, Incorporated, a New York corporation. The property is a twenty-two story building, only partly constructed, originally designed as a hotel and hospital and now but two-thirds completed, and all work thereon has long since been suspended.

The building was subject to a first mortgage amounting to $1,650,000 and also to a second mortgage of $1,000,000.

The alleged bankrupt's holdings in this property consisted chiefly of the capital stock of the Alta Vista Terrace, Incorporated, and second mortgage bonds, all of which are worthless. Such first mortgage bonds on this property as are held by the alleged bankrupt are matured defaulted bonds, which it took up, representing to other bondholders that they had been paid. These amounted to but $70,800, and defaulted first mortgage coupons, amounting to about

$48,000, had also been taken up by the alleged bankrupt, which it represented to the other bondholders were also paid. Such bonds and coupons will, in all probability, be postponed to the bonds held by such other bona fide holders of first mortgage bonds.

[fol. 243] The property is not sufficient in value to pay the other first mortgage bonds. This mortgage was foreclosed and the property sold for $150,000 and bought in by the Committee for First Mortgage Bondholders. The capital stock and second mortgage bonds held by the alleged bankrupt were completely wiped out.

The property is situated in the City of New York and the principal witnesses, besides New York records, will be New York real estate experts as to the value of the property, and the books and records of the Alta Vista Terrace, Incorporated, which is a New York corporation having its principal office and place of business in the City of New York.

k. That the item No. 6 on that Schedule No. 1, Park Central Apartment Hotel and Annex, put in as an asset at $704,031.80 is not, and was not at the time of securing said Equity receivership, worth, at a fair valuation, any sum in excess of $25,000.

This property is a hotel property in the City of New York, standing in the name of Hotel Park Central Inc., a New York corporation. It is under process of foreclosure under the first mortgage. The property is subject to nearly one million dollars in accumulated taxes, and the first mortgage, even aside from the accumulated unpaid taxes, is in excess of the total value of the property.

The holdings of the alleged bankrupt are largely second mortgage securities and stock ownership in the said Hotel Park Central Inc. Such stock is entirely worthless and the second mortgage securities only have a very nominal value. They have no present market value.

The principal witnesses as to the value of this asset will be real estate experts from the City of New York and witnesses in the City of New York to the way in which the few first mortgage bonds acquired by the alleged bankrupt were obtained.

l. That the item No. 16 on that Schedule No. 1, Leverich Towers, put in as an asset at $246,102.89 is not and was not

at the time of securing said Equity receivership, worth at a fair valuation, any sum in excess of $25,000.

This property is situated in the Borough of Brooklyn, in the City of New York. A foreclosure sale recently took place on the first mortgage bond issue, at which sale the property was bid in by the protective committee for the bondholders. The Committee has announced that bondholders will receive about $.20 on the dollar in cash and the balance of their equity in the form of stock. The principal witnesses to the value of this asset are New York real estate experts and persons in the City of New York familiar with the situation concerning said property.

m. That the item No. 17 on that Schedule No. 1, Central Park View Apartments, put in as an asset at $209,388.16 is not and was not at the time of securing said Equity receivership worth, at a fair valuation, any sum in excess of $20,000.

This property is situated in the City of New York and was recently sold at foreclosure for $250,000 on account of a default on the first mortgage bond issue. The principal witnesses to the value of this asset are necessarily New York City real estate experts and persons in New York familiar with this property and the operation thereof. All of the books and papers necessary in respect of the proof of these matters are in New York.

n. That the item No. 29 on that Schedule No. 1, E. Lavin Collateral Trust, put in as an asset at $66,337.50 is an item [fol. 244] of $72,500 all collateral trust bonds which were pledged with the First Mechanics National Bank of Trenton, New Jersey, for a loan of $57,092.50. In March, 1931 said $72,500 all bonds which are scheduled at $66,337.50 as assets were surrendered to said First Mechanics National Bank of Trenton, New Jersey, in satisfaction of the loan, reducing the assets scheduled by $9,000 in excess of the amount of liabilities thereby cancelled. The principal witnesses as to this transaction will be residents of Trenton, New Jersey.

o. That the item No. 7 of that Schedule No. 1, Whitehall, put in as an asset at $533,939.48 is not and was not at the time of securing said Equity receivership, worth, at a fair valuation, in excess of $125,000. That the principal wit-

nesses as to the value of this property will be real estate experts in the State of Florida where the property is situated and persons there familiar with the operations which have resulted in the foreclosure of the property and the liens thereon.

That in the final item on said Schedule 1, "Investments and Advances to Other Buildings" $712,935.33, are included the following items of securities on the properties in New York, New Jersey, Pennsylvania and Massachusetts at the following nominal valuations, all of which these respondents expect to prove are largely inflated, namely:

Lincoln Theatre Building (N. J.)	$38,862.77
Delancy-Clinton Comm'l Bldg. & Theatres (N. Y.)	38,796.00
The Roebling Building (N. Y.)	28,477.83
The Warwick (Boston)	19,368.39
Shea Theatre (N. Y)	18,605.00
Hotel Hildebrecht (N. J.)	15,000.00
Carolyn Park Apts. (N. Y.)	9,516.25
Newbury St. Service Garage (Boston)	7,101.70
The Spruce (Phila.)	5,077.15
Rhebem Theatre (N. Y.)	4,725.64
Cambridge Apt. (Phila.)	4,365.00
Riverside Drive & 103rd St. (N. Y.) Bldg	3,693.30
Dwight Manor Apts. (N. J.)	3,529.59
Bronxville Commodore Apts. (N. Y.)	2,032.50
Sherman Square Apts. (N. Y.)	1,492.50

That the inflation in these items, as the respondents expect to prove, will exceed $50,000. That in each of these instances, the value of the securities is entirely dependent upon the value of the real property involved. That in each instance, such value will have to be proved by real estate experts from New York, New Jersey, Philadelphia or Boston, as the case may be, and by the books and records of the different corporations holding the properties which corporations are organized and situated respectively in the said States of New York, New Jersey, Pennsylvania and Massachusetts.

That the above over-valuations amount approximately to $6,800,000 and affect about 12 different properties situated in the States of Massachusetts, New York, New Jersey and

Pennsylvania and in the District of Columbia, and one in the State of Florida.

That, as compared with these huge items requiring proofs of such character, the items of inflated values of Western properties which these respondents propose to attack are, comparatively few in number and relatively small in amount. They consist of the following items of assets shown in said Schedule I, (Exhibit R hereof) at the follow- [fol. 245] ing nominal values, being securities on buildings in Chicago, Illinois, or holdings therein, namely:

Item No. 3, Hotel Graemere	$815,178.61
Item No. 9, The Churchill	377,999.71
Item No. 10, Harbor View Apartments	370,280.43
Item No. 12, Lincoln-Robey Building	304,696.64
Item No. 13, Jackson Towers	272,015.76
Item No. 14, 20 East Cedar Street	257,249.76

and of the following items of securities of Michigan corporations secured on real estate in the City of Detroit, Michigan, listed in said Schedule 1 (Exhibit R hereof) at the following nominal values, namely:

Item No. 2 Book-Washington Boulevard	$1,322,847.50
Item No. 23 Miles Building	110,398.20
Item No. 24 Carlton Plaza	99,340.82

The inflation in these values of Chicago and Detroit investments above the fair valuation of these properties at the time of the appointment of said equity receivers, and ever since then, amount as these respondents expect to prove, to in the neighborhood of $2,000,000, as compared with the inflations in the valuation of the eastern properties above mentioned, which are of approximately $6,800,000.

Your respondents further will show that during the period between February 28th, 1931 and the filing of said bill in equity for the appointment of said equity receivers on the 21st day of May, 1931, the liabilities of the alleged bankrupt had increased by accretions of interest thereon by over $200,000 and that the value of its assets had steadily dwindled; that in addition it had made heavy expenditures without corresponding income.

In addition to the witnesses from Boston, Massachusetts, New York City, Trenton, New Jersey, Philadelphia, Penn-

sylvania, and Washington, D. C. above referred to, important witnesses will be the said accountants from Worcester, Massachusetts, and numerous witnesses from New York City as to the methods pursued in conducting the business of the alleged bankrupt during the years 1928, 1929 and 1930, bearing on the acquisition of the alleged bankrupt's holdings of defaulted bonds and coupons under the various mortgages referred to and their postponement to the other outstanding securities on said properties.

For all such witnesses from the States of Massachusetts, New York, New Jersey, Pennsylvania and the District of Columbia, this Court will be a more convenient place for trial of the issues than will be the District Court for the Northern District of Illinois and equally convenient for any witnesses from Florida.

These respondents plan, as far as possible, to bring the witnesses to testify in person before the Court on the trial of such issues. So far as that is impossible and it becomes necessary to take their testimony by deposition, it will be equally convenient for the witnesses to take such depositions from either court, where they reside. But it is probable that far more of the witnesses could be induced to attend personally in this court, than in the Northern District of Illinois.

Among other assets shown in the said statement of assets in said Balance Sheet, Exhibit Q hereof, is the item:

"American Trust and Safe Deposit Company
Common Stock ..... $1,032,000."

[fol. 246] As to this stock, the auditors, Messrs. Crosby & Murphy, reported to the Supreme Court of Maine as follows:

"The Balance Sheet of the Company at February 28, 1931, as disclosed by the records of the Company (copy of which is included as Appendix I) shows an equity for the 10,000 shares of common stock of $1,167,258.62 of which $810,488.43 is represented by the Company's equity in the building which it owns and occupies. I understand that the Company has had a tentative offer of approximately $100,000.00 for this equity. Whether this offer is subject to accrued taxes or free from taxes I am not informed. However, the Company has provided cash, in the amount of

$44,500.00 and a reserve for real estate and personal property taxes in the amount of $47,500.00. Should the property be sold subject to the taxes, the equity for the common stock of the Company would be increased by the amount of the reserve. It is further understood that the Company has refused this offer of approximately $100,000.00 but that it will consider an offer of $200,000.00. At this latter value, sale of the building would result in a loss of approximately $600,000.00 and a reduction in the equity for the common stock of the Company to about $567,000.00. This valuation for the common stock of the Company is, of course, further predicated upon the assumption that all other assets are worth the value at which they are carried and that the liabilities of the Company are properly stated."

Your respondents are informed and believe that this is a substantially correct statement of the value of that asset.

In addition to the facts so stated, these respondents are informed and believe that a second mortgage on that property, amounting to $500,000, is in default on the building owned by said American Trust & Safe Deposit Company and reorganization of the property is contemplated. So that the value of this asset is inflated about $465,000.

These respondents further show that in the actual administration of the estate there are but very few properties which are being represented by anything else than securities, which can be administered practically as well in one jurisdiction as in another, by any trustees in bankruptcy, for the reason that they are nearly all second mortgage securities and nothing can be realized therefrom except through lawyers or real estate brokers who will have to be employed in the various matters.

The only important parcels of real estate which the alleged bankrupt claims to own, subject to mortgages, are the following:

The Lincoln Robey Building at Chicago;
The Albion Shore Hotel at Chicago;
The Libby Hotel property in New York;
The Miles Building in Detroit;
The Highland Arms and Paxton Arms in Chicago;
The Pingree Park Apartments in Detroit, and
The Boulevard Square Apartments in Chicago.

On the Lincoln Robey Building, foreclosure proceedings are already pending.

The Albion Shore Hotel is being operated by a receiver.

The Miles Building is under foreclosure and is being operated by a receiver.

[fol. 247] On the Highland and Paxton Arms, the mortgages have been foreclosed and the alleged bankrupt is expected to receive, under a reorganization, one-sixth of the common stock of the new corporations, so that the trustees of the bankrupt will not have the operation of this property.

The Pingree Park Apartments are under foreclosure under the first mortgage and the total nominal interest claimed therein by the alleged bankrupt is $19,174.38.

The Boulevard Square Apartments in Chicago have been for many months under operation by a firm of Chicago brokers and not directly by the alleged bankrupt.

The Libby Hotel property is situate in the City of New York and, as hereinafter stated, will involve litigation there, so that the duties of any trustees in the administration thereof can be more readily performed from Portland than from Chicago.

There is, thus, practically no real estate to be operated by the trustees in bankruptcy in this case, and the other matters can, in general, be as readily operated by this court as by the District Court in the Northern District of Illinois.

29. These respondents deny that a majority in either number or amount of the creditors of the bankrupt reside at points to which Chicago is more accessible than Portland, Maine, and allege that the Committee of Debenture Bondholders, most of the members of which Committee do reside near Chicago, are not the real creditors nor the real parties in interest in the bonds which they claim to represent, but that a very considerable number of the real owners of said bonds reside east of the Alleghanys and north of Virginia.

30. These respondents further allege, on their information and belief, that the real owners of over ninety per cent of the common stock of the alleged bankrupt reside in New York, and that the trustees of such stock, of whom the greater number are resident in Chicago, are but the nominal owners thereof.

31. These respondents further allege that, in the course of the administration of the estate of the bankrupt, the bulk of all the work involved and the bulk of all litigation involved will necessarily be conducted in the States of Massachusetts and New York and in the District of Columbia.

32. That in the State of New York the alleged bankrupt is the real owner of the award of $2,850,000. made in the condemnation proceedings of the Libby Hotel, which is now under appeal in New York City, of which about $1,500,000. will be applicable to the payment of the first mortgage bonds and coupons on that hotel, of which the alleged bankrupt claims to hold $65,666.50; that among other proceedings that it will be necessary to take will be proceedings to attack claims of over $1,000,000. which are advanced by various persons for alleged services in procuring said award, the validity of which claims should all be contested, and will necessarily be conducted in New York.

33. On information and belief that, in addition, in connection with that property, there will have to be inquired into the matter of $515,000. paid out of the treasury of the alleged bankrupt for pretended commissions, etc. for procuring the first mortgage loan of $1,500,000. on that property, which $515,000. these respondents allege, on their information and belief, were illegally paid out of the treasury of the alleged bankrupt directly or indirectly to officers of the alleged bankrupt without adequate consideration therefor. And such investigation and any ensuing litiga-
[fol. 248] tion will have to be conducted in the State of New York.

34. That in the District of Columbia is situate the Mayflower Hotel, the title to which is involved in very complex arrangements running through several corporations, many of whose bonds and much of whose stock is claimed to belong to the alleged bankrupt.

That the said Mayflower Hotel property is subject to mortgages amounting on their face to $9,900,000, of which amount bonds aggregating $292,010.41 are claimed to be owned by the alleged bankrupt, as is also a large amount of stock in such Mayflower corporation having a par value of $2,739,106.00.

35. That questions of priorities will arise as to the defaulted bonds on the various New York properties held by

the alleged bankrupt and the defaulted bonds held by the said alleged bankrupt on the properties in Massachusetts, which claims will have to be liquidated respectively in the States of New York and Massachusetts.

36. That the properties in New York are situated either in the Southern or the Eastern District of New York, and that for proceedings in Massachusetts, in the Eastern or Southern District of New York and in the District of Columbia, this court is more conveniently situated than the Court in Chicago, Illinois.

37. In addition, the real owner of over ninety per cent of the common stock of the alleged bankrupt is one William J. Moore, who resides in the City of New York. He has been the mainspring in the transactions of the American Bond & Mortgage Company which will need investigation in the bankruptcy proceeding.

38. That the present officers and directors of the alleged bankrupt who reside in Chicago with the exception of Charles C. Moore, a vice-president of the alleged bankrupt, are mere recent nominees of the said William J. Moore, or of persons recently selected by him to act as voting trustees of the stock owned by him, and as these respondents are informed and believe, have no knowledge of the various transactions of the American Bond & Mortgage Company which will come under investigation in the bankruptcy proceedings.

39. These respondents further allege, on their information and belief, that over $6,800,000. of preferred stock were issued and sold by the American Bond & Mortgage Company. That the purchases thereof were procured by fraudulent representations made by it as to its assets and liabilities, and that it is probable that the great bulk of these preferred stockholders will, on discovery by them of the facts of such fraudulent misrepresentations, cancel their purchases of such stock and claim to stand as creditors for the amounts paid by them to the alleged bankrupt for that stock; that a very considerable number of the purchasers of such stock reside east of the Alleghanys and north of Virginia, and for all of them this is a more convenient tribunal than the northern district of Illinois.

40. These respondents further allege that by reason of the matters above stated and the attitude taken by the District Court of the United States in the Northern District of Illinois in connection with its appointment of equity receivers after the filing of the said petition in bankruptcy in Illinois and with its various decrees in that equity suit, the matter cannot properly be heard before that court, because it has rejected and refused to entertain the said bankruptcy proceeding so begun in Illinois, and the same is not in fact a pending proceedings before it, and because of the defects [fol. 249] in the petition in bankruptcy there filed, that court has no jurisdiction to entertain such proceeding.

41. The act of bankruptcy of the alleged bankrupt in securing the appointment of the equity receivers in the District Court of the United States for the Northern District of Illinois by its answer therein cannot be raised in the said Chicago bankruptcy proceeding, because the bankruptcy petition in that court was filed before such act of bankruptcy was committed by the alleged bankrupt; and, under General Order No. 6, the petition therein cannot be amended to set up acts of bankruptcy, which occurred subsequent to the filing of that petition in bankruptcy.

42. These respondents further allege that the administration of the affairs of the alleged bankrupt in this district would be more convenient and less expensive than in the Northern District of Illinois, where legal proceedings are apt to be extremely expensive.

43. These respondents further point out that in the Illinois proceeding the answer of the bankrupt prays a jury trial, but its answer in this court does not do so; that the answer in this case consists, with the sole exception of the denial of insolvency, of negatives pregnant; and the denial of insolvency in this court does not state in what sense the bankrupt claims to be insolvent, nor does it by its answer deny the allegation that its assets, at a fair valuation, are not sufficient to meet its liabilities; and these respondents have filed a motion in this court to strike out the said answer in this court as insufficient and for adjudication as for want of an answer.

But, if the court holds that such denial of insolvency is sufficient, then the bulk of the evidence to be taken on

that question, after production of the books of the alleged bankrupt, as required by law, will consist of testimony of expert witnesses as to the values of the securities claimed to be held by it, which represent the values of the real property situate in the District of Massachusetts, in the Southern and Eastern Districts of New York and in the District of Columbia, for all of which this court is a far more accessible tribunal than the court in the Northern District of Illinois.

44. In addition, these respondents allege that the said petition in bankruptcy so filed in the Northern District of Illinois is so defective that no adjudication could be had thereunder and, on their information and belief, that it was designedly made so defective, with the intent and purpose that it should ultimately be dismissed after serving its purpose as a protection for the said equity receivership; that as to the two pretended acts of bankruptcy purported to be alleged in that proceeding were, in fact, as these respondents are informed and believe, neither of them made with intent to prefer the payee, nor actually did prefer the payee over other creditors of the same class. Nor are they, either of them, alleged to have been made with such intent or to have constituted a preference over other creditors of the same class.

45. These respondents further allege, on their information and belief, that the judgment in favor of H. D. Watts Company so alleged as the first act of bankruptcy in said Illinois petition, was a payment of a judgment which had been stayed for more than four months prior to May 21, 1931, by a supersedeas bond, which supersedeas bond from the time of giving it had been secured by the deposit of securities with the Surety Company which gave the bond, far exceeding in amount the sum so paid; and that the second pretended act of bankruptcy so alleged in said Illinois bankruptcy petition, viz., the payment to the First National Bank of Davenport, Iowa—was a compro-[fol. 250] mise and settlement of a claim for over $3,800 for rents, at least partially secured by a lien, and such compromise and settlement was not made with intent to prefer, but to get rid of that liability and additional liabilities still to accrue under a lease, and to secure cancel-

lation and surrender of such lease; and such payment and cancellation antedated both the proceeding to foreclose the Mayflower mortgages and the proceeding to foreclose the mortgage on the Park Central Hotel.

46. These respondents further allege, on their information and belief, that these two pretended acts of bankruptcy were selected and alleged in order that they might be subsequently contradicted by the American Bond & Mortgage Company; that the Chicago Title & Trust Company and Arthur W. Draper, who have been appointed receivers in the said equity suit in Chicago, were both of them actively concerned in the making of said payments to said H. D. Watts Company and the said First National Bank of Davenport, Iowa; and in trying to secure the transfer of these proceedings and the trial of the question of bankruptcy under such defective Illinois petition in bankruptcy.

47. These respondents further allege that while the conduct of the bankruptcy proceeding in the Northern District of Illinois may be more convenient for the bankrupt and for those who have been engaged in making preferential payments out of the assets of the bankrupt to favored creditors, the conduct of these proceedings in this court rather than in the Northern District of Illinois will be far more convenient to practically all other creditors of the alleged bankrupt.

48. These respondents further show to the Court that on the 30th day of June, 1931, an application was made and heard in the Chicago bankruptcy proceeding to stay all proceedings on the said bankruptcy petition in the Northern District of Illinois until the further determination of this Court in this proceeding. That at the same time, that Court heard a motion to dismiss the Illinois petition in bankruptcy for defects on its face, and thereafter and on the 4th day of September, 1931, filed the following order without any opinion:

"Comes the American Bond and Mortgage Company by its attorneys and upon arguments presented to the court on its motion to dismiss

It is hereby ordered that the motion presented to dismiss petition in bankruptcy be and same is hereby over-

ruled and the proceedings on said petition be stayed until the hearing on the petition in bankruptcy filed against the respondent herein in the District Court for the District of Maine or until the further order of the court."

Wherefore these respondents pray that all these facts be fully inquired of and ascertained by this Court and that the said petition of the American Bond & Mortgage Company for transfer of this proceeding to the Northern District of Illinois, Eastern Division, and its consolidation with the said alleged bankruptcy proceeding in that District be, in all respects, denied.

Royal Indemnity Company, Petitioner, by William H. Wunner, Secretary. (Seal.) Frederick R. Dyer (Portland, Me.), Saul S. Myers (New York), Attorneys for Petitioning Creditors. Selden Bacon (New York), Ropes, Gray, Boyden & Perkins (Boston), of Counsel.

[fol. 251] STATE OF NEW YORK,
County of New York, ss:

William H. Wunner, being duly sworn, deposes and says: that he is the Secretary of Royal Indemnity Company, one of the petitioning creditors herein; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

The reason that this verification is made by deponent and not by the aforesaid Royal Indemnity Company is that the said Royal Indemnity Company is a corporation and deponent is an officer thereof, to wit, its Secretary.

All of the petitioning creditors are united in interest.

William H. Wunner.

Sworn to before me September 18, 1931. Howard Myers, Notary Public, Westchester Co. Certificate filed in New York County #286.

EXHIBIT "A"

Involuntary Petition for Adjudication in Bankruptcy of the American Bond and Mortgage Company in Illinois

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 47250

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Alleged Bankrupt

Your petitioners, Bellamy-Neff Company, a corporation, of Chicago, Illinois, Jackson Towers Building Corporation, a corporation, of Chicago, Illinois, Walker G. Everett, of Chicago, Illinois, and R. W. Kenyon, of Chicago, Illinois, respectfully represent that the American Bond and Mortgage Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, with its principal place of business in Chicago, Cook County, Illinois, at 127 North Dearborn Street. Your petitioners represent that the said alleged bankrupt has for the greater part of six months next preceding the filing of this petition had its principal place of business in Chicago, Illinois, as [fol. 252] above set forth, and that it owes debts in excess of One Thousand Dollars ($1000.00) and that it is not a municipal, railroad, insurance, or banking corporation, and that it is not a wage earner or a person engaged chiefly in farming or the tillage of the soil.

Your petitioners further represent that they are creditors of said American Bond and Mortgage Company, a corporation, the Alleged Bankrupt, having provable debts in excess of all securities by them held aggregating the sum of Five Hundred Dollars ($500.00) representing moneys loaned to said alleged bankrupt or for services or goods, wares and merchandise furnished and sold to said alleged bankrupt as follows:

Bellamy-Neff Company	$329.00
Jackson Towers Building Corporation	133.54
Walker G. Everett	500.00
R. W. Kenyon	1000.00

Your petitioners further represent that the said American Bond and Mortgage Company, a corporation, is insolvent and owes debts greatly in excess of the value of its assets, and that it has committed acts of bankruptcy in that it did within four (4) months next preceding the filing of this petition, to-wit, on the 26th day of February, 1931, transfer, while insolvent, to H. D. Watts Company, a creditor, a portion of its assets consisting of a sum in excess of Three Hundred Sixty-two Thousand Dollars ($362,000.00) to apply on judgment of said creditor in Supreme Judicial Court of Massachusetts, thereby preferring said creditor over its other creditors, and that it did, within four (4) months next preceding the filing of this petition, to-wit, on the 1st day of May, 1931, while insolvent, transfer to the First National Bank of Davenport, Iowa, a creditor, a portion of its assets consisting of the sum of Two Thousand Five Hundred Dollars ($2,500.00), thereby preferring said creditor over its other creditors, and that it did, within four (4) months next preceding the filing of this petition, and while insolvent, transfer to certain of its creditors other portions of its assets consisting of money or securities, with the intent to prefer said creditors over its other creditors, and your petitioners ask leave to insert herein the names of said other creditors and the description of the amounts paid to said creditors when ascertained, and that it did also within four (4) months next preceding the filing of the petition, and while insolvent, commit other and further acts of bankruptcy within the definition of Section 3, Chapter 3, sub-paragraph (a) of the Act of Congress in relation to bankruptcy and the amendments thereto, and your petitioners ask leave to specifically designate said acts of bankruptcy when more definitely ascertained.

Wherefore your petitioners pray that service of this petition with a subpœna may be made upon the said American Bond and Mortgage Company, a corporation, and that it may be adjudicated a bankrupt within the purview of the Acts of Congress in relation thereto, and your petitioners will ever pray.

Bellamy-Neff Company, Jackson Towers Building Corporation, Walker G. Everett, R. W. Kenyon, by Harold F. White, Agent and Attorney.

[fol. 253] STATE OF ILLINOIS,
County of Cook, ss:

Harold F. White, being first duly sworn, deposes and says that he is one of the attorneys for the petitioners herein and their agent for the purpose of signing this petition, and that he has been duly authorized to sign this petition on behalf of said petitioners, and that the matters and things herein set forth are true to the best of his knowledge and belief.

Harold F. White.

Subscribed and sworn to before me this 21st day of May, A. D. 1931. (Signed) A. M. Sandley, Notary Public.

Filed May 21, 1931 5:00 P. M. Chas. M. Bates, Clerk. Attorneys: White & Hawxhurst, 1 N. LaSalle St., Chicago, Ill. Subpoena issued returnable May 28, 1931.

EXHIBIT "B"

Petition for the Appointment of Receiver in Bankruptcy in the Involuntary Bankruptcy Proceeding in Illinois

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 47250

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Alleged Bankrupt

Your petitioner, Bellamy-Neff Company, a corporation, of Chicago, Illinois, respectfully represents that it is a creditor of the above named American Bond and Mortgage Company, a corporation, organized and existing under and by virtue of the laws of the State of Maine with its principal place of business in Chicago, Illinois; that it has a provable claim against the said alleged bankrupt in excess of all securities held by it in the sum of Three Hundred and Twenty-nine Dollars ($329.00).

Your petitioner further represents that it did on this day with certain other creditors file a petition asking that the said above named American Bond and Mortgage Company,

a corporation, alleged bankrupt, be adjudicated a bankrupt; that it now files this its petition for the appointment of a Receiver of the said alleged bankrupt, and in [fol. 254] connection therewith respectfully shows to the Court the following facts:

The said American Bond and Mortgage Company, a corporation, is engaged in the business of underwriting and selling securities, principally bonds and mortgages, and also is engaged in the general investment business, with its principal place of business and its main office at 127 North Dearborn Street, Chicago, Illinois, with branch offices and places of business at various cities in the United States, with a large branch office in New York, Cleveland, St. Louis, San Francisco, and other subsidiary offices. The said alleged Bankrupt has within the last year or more next preceding the filing of this petition been in financial difficulties, and its affairs have been run by certain of its large creditors to a great extent or by committees appointed by them, and by the common stockholders and bondholders or committees representing each of them. A Receiver of the said alleged bankrupt was applied for in Maine by certain stockholders, which suit in equity is pending and undetermined. The said alleged bankrupt has liabilities of approximately Eight Million Dollars ($8,000,000.00), and the fair liquidating value of its assets do not exceed Seven Million Dollars ($7,000,000.00).

Your petitioner, therefore, shows that the said American Bond and Mortgage Company, a corporation, is insolvent, and that its assets are not sufficient to meet its liabilities; that a Receiver or Receivers of the said American Bond and Mortgage Company should be appointed to take possession of and conserve its assets pending the further order of this Court.

Wherefore, your petitioner prays that some competent person or persons or some competent trust company should be appointed Receiver of the said American Bond and Mortgage Company, a corporation, to take possession of its assets and hold, manage and direct and administer the same in accordance with the orders of this Court, and your petitioner will ever pray.

Bellamy-Neff Company. (Signed) Harold F. White, Agent and Attorney.

State of Illinois,
County of Cook, ss:

Harold F. White, being first duly sworn, deposes and says that he is one of the attorneys for the petitioner herein and its agent for the purpose of signing this petition, and that the matters and things therein set forth are true to the best of his knowledge and belief.

Harold F. White.

Subscribed and sworn to before me this 21st day of May, A. D. 1931. (Signed) A. M. Sandley, Notary Public.

Filed May 21, 1931 at 5 o'clock P. M. Attorneys: White & Hauxhurst, 1 N. LaSalle St., Chicago, Ill. Chas. M. Bates, Clerk.

[fol. 255] Exhibit "C"

Bill of Complaint in the Equity Action Brought in Illinois by T. H. Clarke et al.

United States of America,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division

In Equity. No. 10539

T. H. Clarke et al., Plaintiffs,

vs.

American Bond and Mortgage Company, a Corporation, Defendant

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois:

The plaintiffs, T. H. Clarke, William Sutherland, J. Campbell Burton, Harry Boyack, James P. McGregor, Arthur Young, W. D. McGregor, F. G. Colley, W. W. Nissley, Harry L. Cavanagh, Jr., Edward J. Murname and Eric Bloomqvist, co-partners, doing business as Arthur

Young & Company, some of them residents of the State of Illinois in the Northern District thereof and some of them residents of the State of New York, bring this, their bill of complaint on their own behalf and on behalf of all other creditors of the defendant, American Bond and Mortgage Company, a corporation organized and existing under the laws of the State of Maine, and a citizen and resident of said State, and thereupon complain and allege as follows:

First. This is a suit of a civil nature, wherein there is involved a controversy wholly between citizens of different states, and wherein the matter and amount in controversy, exclusive of interest and costs, exceeds the sum or value of Three thousand ($3,000.00) Dollars.

Second. The plaintiffs, T. H. Clarke, J. Campbell Burton, Arthur Young, W. D. McGregor, F. G. Colley, W. W. Nissley and Eric Bloomqvist are each citizens of the State of New York and residents of said State, and the plaintiffs, William Sutherland, Harry Boyack, Harry L. Cavanagh, Jr., James P. McGregor and Edward J. Murnane are each citizens of the State of Illinois and resident in said State, and inhabitants of the Northern District of Illinois.

Third. The defendant was, at all times hereinafter mentioned, and now is a corporation organized and existing under the laws of the State of Maine and is a citizen and resident of said State, having an office for the transaction of business and transacting and doing business in the City of Augusta, State of Maine.

Fourth. On information and belief, the defendant was incorporated in the year 1910 for the purpose of carrying on a general brokerage business, purchasing, selling and dealing in and with bonds, securities and other evidences of indebtedness and, in general of carrying on the business [fol. 256] of investment brokers in the City of Chicago, State of Illinois and other States and has been and is engaged in such business in this district.

Fifth. On information and belief, the defendant, in the course of its business has acquired and now owns, among other properties, various bonds, notes and other evidences of indebtedness secured by mortgages or trust deeds covering real estate or leaseholds in the City of Chicago, State of

Illinois, and in other parts of the State of Illinois and in other states, which said bonds, notes and other evidences of indebtedness constitute a substantial part of the assets of the defendant. Some of said bonds, notes and other evidences of indebtedness are secured by first mortgages or first mortgage trust deeds; some of said bonds, notes and other evidences of indebtedness so secured have been subordinated to other bonds, notes or other evidences of indebtedness outstanding under the same first mortgage or trust deed, and some of said bonds, notes and other evidences of indebtedness are secured by junior mortgages or trust deeds. Defendant also owns equities in real estate resulting from the foreclosure of the mortgages or trust deeds securing such bonds, notes and other evidences of indebtedness and as the owner and holder of such bonds, notes and other evidences of indebtedness has, in many instances, made substantial advances, which under the terms of the several trust deeds, pursuant to which such advances were made, have become additional indebtedness secured by the terms of said respective trust deeds.

Sixth. On information and belief, the defendant owns or controls capital stock of a large number of corporations, some of which said corporations are subsidiaries organized for the purpose of carrying on various branches of the business of the defendant and some of which said corporations are building corporations owning land and the building or buildings situated thereon; some of which said corporations are doing business in the State of Illinois and some of which said corporations are doing business in other States.

Seventh. On information and belief, the defendant owns other securities, owns accounts in various banks in this and other districts, owns divers accounts receivable and owns equities in real estate in the State of Illinois and other States.

Eighth. The plaintiffs are creditors of the defendant and the defendant is now justly indebted to the plaintiffs in the sum of Three thousand one hundred eighty ($3,180.00) Dollars for services rendered by the plaintiffs to the defendant at defendant's request, payment of which sum has been demanded by the plaintiffs from the defendant and payment whereof has been refused by the defendant, and said sum is now due and payable and wholly unpaid.

Ninth. On information and belief, the defendant is indebted to general creditors in a sum in excess of Eight Million ($8,000,000.00) Dollars, part of which said indebtedness has matured and remains unpaid, and less than Three Million ($3,000,000.00) Dollars of which said indebtedness is secured, which said security in a large part is a pledge of bonds, notes and other evidences of indebtedness owned by said defendant.

Tenth. On information and belief, the defendant is obligated in large sums on commitments entered into in connection with the purchase of bonds or mortgages, said sums to be paid out for the erection of a building or buildings to be financed out of the proceeds of the sale of said bonds or [fol. 257] mortgages and such payments to be made from time to time in the course of erection or construction of said building or buildings, pursuant to the terms and conditions of said commitments, and the completion of which said buildings, free and clear of liens, has in many instances been guaranteed by the defendant in connection with the sale by it of the bonds secured thereby. The investing public is, and has been for sometime, interested in investments in stock, and as a consequence there is and has been practically no market for bonds, notes and other evidences of indebtedness secured by mortgage or trust deed. Defendant has, by reason of said market conditions, been unable in many instances to sell all of the bonds of the issues, out of the proceeds of the sale of which it would contemplate that the construction of such building or buildings should be financed, and unless the remainder of said bonds can be sold said building or buildings cannot be completed and will represent a total loss to the defendant and a probable loss to the owners and holders of such of the bonds secured thereby as have heretofore been sold by the defendant.

Eleventh. On information and belief, certain of the creditors of the defendant have brought suit against the defendant on their claims and other creditors of the defendant are pressing their claims for payment and the plaintiffs apprehended that such creditors will forthwith bring suit thereon and in divers other manners enforce their respective claims. Such action on the part of such creditors will, as the plaintiffs believe, result in judgments, executions and seizures by

sheriffs, marshals and other like officers and in enforced sales of the property of the defendant and any such action on the part of such creditors will cause great and irreparable injury and loss to the defendant and to its creditors including the plaintiffs.

Twelfth. On information and belief, that said defendant is solvent: that the properties and assets of the defendant have an aggregate value in excess of the aggregate amount of defendant's indebtedness, but said properties and assets, for the reasons hereinabove and hereinafter set forth, can only be realized upon gradually unless a considerable sacrifice is to be made.

Thirteenth. On information and belief, in many instances, in which the bonds, notes and other evidences of indebtedness owned by the defendant are secured by junior mortgages or trust deeds or have been subordinated to the remaining bonds, notes or other evidences of indebtedness secured by the same mortgage or trust deed, foreclosures have been instituted or threatened on behalf of the holders of the prior bonds, notes or other evidences of indebtedness; and in order to protect the interests of the defendant and to realize eventually upon such securities it has become necessary and will, from time to time, be necessary to advance large sums of money in order to reinstate the mortgages or trust deeds securing said prior bonds, notes or other evidences of indebtedness, and in order to take the necessary steps to secure control of the property covered by such mortgage or trust deeds and cause the same to be administered for the best interest of the holders of the bonds, notes and other evidences of indebtedness issued under the mortgages or trust deeds covering such properties. Said situation has been rendered more acute by reason of the fact that in many instances the buildings on the properties securing such mortgages or trust deeds have, by reason of renting conditions, been rented only partially or at low rates. During a considerable space of time preceding the date hereof little building has been done in the City of Chicago by reason of the fact that the lack of market for the sale of bonds has made the financing of [fol. 258] such building operations difficult, and plaintiffs believe that as a result thereof the renting situation will

improve and that the real estate securing such bond issues will eventually be restored to its true value and defendant and its creditors and stockholders will benefit thereby, provided that the necessary funds to prevent the loss thereof in the interim can be procured.

Fourteenth. On information and belief, one of the substantial assets of the defendant is the good will of its business and plaintiffs believe that, unless the obligations of the defendant can be performed and its indebtedness paid and its business administered and liquidated in an orderly manner, the value of said good will will be entirely lost.

Fifteenth. On information and belief, if the property and assets of the defendant should be sold or disposed of at forced sale they would not bring their true value and might prove to be insufficient to provide in full for the payment of the indebtedness of the defendant, and if said property and assets are permitted to be so sold, or if the necessary funds cannot be obtained for the preservation of said property or assets, the creditors of the defendant, including the plaintiffs and the defendant and its stockholders, will thereby suffer irreparable injury, damage and loss.

Sixteenth. Any attempt by the plaintiffs to enforce at law the claim of the plaintiffs as general creditors of the defendant will precipitate similar action on the part of other creditors of the defendant, which will in turn lead to wasteful strife and controversy, and plaintiffs believe that such strife and controversy can be avoided and the property of the defendant preserved for equitable distribution among those entitled thereto and that such property can be protected and realized upon and that the commitments and contracts of the defendant can be performed only through the intervention of this Honorable Court and the granting of equitable relief, including the appointment of a receiver or receivers properly empowered to carry on the business of the defendant and borrow the necessary funds to protect and realize upon its said assets, subject to the approval of this Honorable Court. Unless this Honorable Court, in view of the present inability of the defendant to meet its maturing obligations and to properly protect its assets, will deal with the properties of the defendant as a trust fund for the payment of its creditors, as their several interests

therein shall appear, such properties will be decided waste and sacrifice and interminable litigation will result, to the great and irreparable damage and injury of the plaintiffs, the other creditors of the defendant and of the defendant itself.

Eighteenth. Inasmuch as the plaintiffs have no adequate remedy at law, but can have relief only in equity, the plaintiffs file this bill of complaint on behalf of themselves and of all other creditors of the defendant who shall come in and contribute to the expense of this suit, and the plaintiffs pray for equitable relief as follows:

1. That this Honorable Court administer all and singular the property rights and assets of the defendant and adjudicate, enforce and adjust the rights, liens, equities and claims of all the creditors of said defendant, including the claim of the plaintiffs as the same may be determined.

2. That in order to presrve and protect the properties and assets of the defendant, and in order that they may be held together and ultimately sold or otherwise disposed of in the [fol. 259] most advantageous manner, this Honorable Court forthwith appoint a receiver or receivers of all and singular the property and assets of every nature wheresoever situate, held, owned or controlled by the defendant, with full power and authority to take into his or their possession and to hold such property and assets and to continue, manage and operate, as a whole, the business now being conducted by the defendant, with such powers as this Honorable Court may from time to time grant.

3. That said receiver or receivers be authorized and empowered to bring suit for collection, receive and take into his or their possession all the property and assets, real, personal and mixed, goods, chattels, credits, rights, claims, and equities, books, papers, securities, cash and other property whatsoever and wheresoever situate of the defendant; to institute, prosecute, become a party, intervene in, compromise or defend suits and actions at law or in equity, or otherwise, either for the recovery, or protection, or maintenance of any of the property and assets of the defendant as he or they may deem necessary or proper, including the institution and prosecution of such ancillary proceedings

in any court or courts of the United States or of any State or of any foreign nation as he or they may deem advisable, and including also any other suits, actions or proceedings at law or in equity or otherwise in which the defendant may have any interest as plaintiff, defendant, or otherwise, and including the power to continue any such pending suits and to defend or otherwise dispose of any such proceedings, suits or actions, to settle or compromise or make allowance on any or all debts now due and owing or which may hereafter be due and owing to the defendant, as he or they may deem advisable or proper.

4. That said receiver or receivers be authorized and empowered to continue the operation of the business of the defendant and to take and to employ and discharge and pay the compensation, salaries and wages of such attorneys, counsel, managers, superintendents, foremen, accountants, bookkeepers, salesmen, agents, laborers, mechanics, workmen and such other employees as may be necessary and incidental to the operation of the business of the defendant as he or they may deem necessary or advisable in connection with the custody, control, preservation, operation and management of the properties and business of the defendant; to continue existing agreements, arrangements, commitments and relations of the defendant to and with other corporations, firms and individuals to the extent that he or they may deem advisable until the further order of this court; to perform the existing contracts of the defendant to the extent that performance thereof may seem to him or them desirable and profitable; to enter into and perform other contracts in the regular course or conduct of the business of the defendant or otherwise; to purchase for cash or on credit supplies, equipment, material or other property as may be advisable in connection with the administration of the assets of the defendant; to pay any and all claims for services, wages, labor, supplies, material, equipment, or otherwise, that may be entitled to priority or which may constitute a lien upon any of the properties of the defendant; to pay the salaries and wages of agents, employees, laborers and servants of the defendant, accrued or to accrue, so far as said receiver or receivers may deem [fol. 260] necessary, or expend to secure the continuation of the service of such agents, employees, laborers and work-

men; to advance moneys of the defendant from time to time to any or all of the corporations owned or controlled by the defendant, or any corporation in which the defendant may have an interest or which may be indebted to the defendant so far as it may be deemed necessary or advisable by said receiver or receivers in order to protect or preserve the value of the investment of the defendant in such corporations or the value of the indebtedness of such corporation to the defendant to protect and preserve the interest of the defendant in any properties covered by the mortgages or trust deeds securing bonds, notes or other evidences of indebtedness owned by the defendant, to protect such properties against foreclosure in the interest of the owners of bonds, notes or other evidences of indebtedness, prior in lien, to the bonds, notes or other evidences of indebtedness owned by the defendant, to purchase said property at any sale held in such foreclosure proceedings and to redeem such properties from sale in any such foreclosure proceedings; to pay any taxes, assessments or other governmental charges, prior in lien to the lien of the bonds, notes or other evidences of indebtedness owned by said defendant, and to redeem such properties from sale for such taxes, assessments or other governmental charges; to protect the equities owned by the defendant in real estate and to pay indebtedness accrued and which may accrue from time to time on account of bonds, notes or other evidence of indebtedness secured by a mortgage thereon and on account of taxes, assessments or other governmental charges against said premises; to purchase such properties at sale in foreclosure, or other proceedings and to redeem such properties from sale in foreclosure, or other proceedings, to manage and operate the buildings on properties owned by the defendant, to incur and discharge any and all expenses which he or they may deem necessary or advisable for any of said purposes, to borrow money on receiver's certificate or otherwise for any of the purposes hereinabove enumerated and to incur such expense as he or they may deem necessary or advisable in connection therewith and to have the usual powers of receivers in like cases, all until the further order of this court in the premises.

5. That in managing and operating the properties and business of the defendant said receiver or receivers be au-

thorized to act in association with other ancillary receiver or receivers who may be appointed by any other court to take possession of and operate any other property or assets of the defendant situated outside the territorial jurisdiction of this court and to take and to transfer and consent to the transfer from time to time of any moneys and credits to or from the territorial jurisdiction of this court and such ancillary jurisdiction or jurisdictions to the extent that may from time to time be reasonably required and to cooperate to the fullest extent with any such ancillary receiver or receivers in managing and operating the business and property of the defendant.

6. That all creditors and stockholders of the defendant and all other persons, firms and corporations be enjoined from instituting or prosecuting or continuing the prosecution of any action, suits or other proceedings at law, or in [fol. 261] equity, or under any statutes, against the defendant, and from levying any attachments, execution or other process upon or against any of the properties of the defendant, or from taking or attempting to take into their possession any part of the properties of the defendant, and from doing any act whatsoever to interfere with the possession and management by said receiver or receivers of the properties and business of the defendant, or in any way interfering with said receiver or receivers in the discharge of their duties, or interfering in any way with the administration and disposition in this suit of the avails and properties of the defendant.

7. That all creditors of the defendant and all persons interested in the defendant be permitted to intervene in and become parties to this suit, if and as permitted and authorized so to do by this Honorable Court.

8. That a writ or writs of injunction issue out of and under the seal of this Honorable Court to be issued by one of your Honors, directing, enjoining and restraining the defendant and the owners, superintendents, managers, attorneys, agents and employees of the defendant, and all other persons, firms and corporations from interfering with transferring, selling or disposing of any of the property or assets or income of the defendant, or from taking pos-

session of or attaching or levying upon, or attempting to sell or in any manner dispose of any part of the properties of the said defendant.

9. That at such time or times as may be found just and proper the properties and assets of the defendant may be ordered to be sold in whole or in part in such manner and upon such terms and conditions as this Honorable Court shall deem just and equitable and that any such order of sale shall make proper and suitable provision for the preservation of all equities, rights, priority claims and liens of the creditors of the defendant, and shall provide for the sale of the properties of the defendant subject to, or free and clear from, any and all liens and incumbrances, in whole or in part, in such manner and upon such terms as this Honorable Court may direct, and that the proceeds of any such sale be distributed among those entitled thereto as this Honorable Court shall adjudicate, and that, in case of any sale herein of the property of the defendant, it may be directed to make, execute and deliver to the accepted purchaser or purchasers, upon any such sale, such releases, bills of sale, and conveyance, as may be necessary or proper to vest in such purchaser or purchasers the title to all such several properties, or that the properties of the defendant may be returned to the defendant if and to the extent that proper provision shall be made for the claims of the plaintiffs and other creditors of the defendant, and that plaintiffs may have such other and different relief as to this Honorable Court may seem proper and as may be necessary fully to protect and enforce the rights and equities of the plaintiffs and of all the other creditors of the defendant.

10. That a writ of subpœna may be granted unto the plaintiffs, issued out of and under the seal of this Honorable Court and directed to the defendant therein and thereby requiring the defendant to appear before this honorable court on a certain day then and there to make full, true and direct and perfect answers to all and singular [fol. 262] in the premises (but not under oath, answer under oath being hereby expressly waived) and to further perform and abide by such orders, directions and decrees

as may be made against it in the premises and as shall seem proper and right in equity and good conscience.

And the plaintiffs will ever pray, et cet-ra.

T. H. Clarke, William Sutherland, J. Campbell Burton, Harry Boyack, James P. McGregor, Arthur Young, W. D. McGregor, F. G. Colley, W. W. Nissley, Harry L. Cavanagh, Jr., Edward J. Murname, and Eric Bloomquist, Copartners as Aforesaid, by Harry L. Cavanagh, Jr. J. Arthur Miller and Townley, Wild, Campbell and Clark, Solicitors for Plaintiffs.

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division:

Harry L. Cavanagh, Jr., being first duly sworn upon oath deposes and says that he is the duly authorized agent in this behalf of plaintiffs in the above entitled cause; that he has read the foregoing bill of complaint by him subscribed for and on behalf of the plaintiffs and knows the contents thereof; that he has knowledge of the facts and that the matters and things therein alleged are true in substance and in fact, except as to the matters therein stated to be alleged upon information and belief, and as to these matters affiant states that he believes the same to be true.

The grounds of affiant's belief as to all matters in said bill of complaint not stated upon his knowledge are the following; books, papers and documents examined by the affiant and statements made by representatives of the defendant.

Harry L. Cavanagh, Jr.

Subscribed and sworn to before me this 21st day of May, 1931. Catherine Newton, Notary Public.

Filed May 21, 1931, at 5 P. M. Charles M. Bates, Clerk.

[fol. 263] EXHIBIT "D"

Answer of the American Bond and Mortgage Company to the Bill of Complaint Filed by T. H. Clarke et al., in the Equity Action in Illinois

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation, Defendant

And this defendant answering admits the allegations in said bill of complaint contained, and admits that it would be to the best interest for the purpose of protecting and preserving the respective rights and equities of the plaintiffs and of all other creditors of the defendant, and for the purpose of preserving the assets, property and business of the defendant, that a receiver be appointed in the above entitled cause.

And therefore this defendant consents that an order may be entered by this Court appointing a receiver, in accordance with the prayer contained in the bill of complaint filed herein.

American Bond & Mortgage Company, by H. E. Ambler, Its Duly Authorized Agent. H. E. Ambler, Solicitor for American Bond & Mortgage Company.

[fol. 264] EXHIBIT "E"

Order Appointing Chicago Title & Trust Company Receiver in the Equity Action in Illinois Brought by T. H. Clarke et al.

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation, Defendant

This cause coming on to be heard on the bill of complaint of the complainants entered herein, and upon the answer of the defendant admitting the allegations in said bill and consenting to the relief prayed therein, and it appearing to the Court that the appointment of a receiver as prayed for in said bill of complaint is desirable, and the Court being fully advised in the premises,

It is therefore ordered, adjudged, and decreed as follows:

(1) That the defendant, though appearing to own properties and assets which at a fair valuation exceed its liabilities, is now unable to meet its immediate maturing obligations and will so continue for a considerable time; that the complainants are entitled to the relief hereby granted; that they have no adequate remedy save through the granting of this decree; that it is necessary for the protection and preservation of the respective rights and equities of the complainants and of all other creditors of the defendant that the assets, property and business of the defendant be preserved and administered as an entirety through a Receiver to be appointed herein, and that it is necessary that a Receiver of the assets, property and business of the defendant be appointed forthwith.

(2) That the Chicago Title and Trust Company be, and it hereby is appointed Receiver of the above named American Bond & Mortgage Company, and of all of its property, rights and assets, of every nature and wheresoever situate, owned or controlled by the defendant, or in which it has an interest, with full power and authority to take into its possession and to hold such property and assets, and to continue to manage and operate as a whole the business now being conducted by the defendant.

(3) That the said Receiver be authorized and empowered to bring suit for, collect, receive and take into its possession all the property and assets, real, personal or mixed, goods, chattels, credits, rights, claims and equities, books, papers, securities, cash and other property whatsoever and wheresoever situate of the defendant; to institute, prosecute, become a party to, intervene in, compromise or defend suits and actions at law or in equity, or otherwise, either for the recovery, or protection or maintenance, of any of the property and assets of the defendant as said Receiver may deem necessary and proper, including the institution and prosecution of such ancillary proceedings in any court [fol. 265] or courts of the United States, or of any state, or of any foreign nation, as said Receiver may deem advisable, and including also any other suits, actions, or proceedings at law or in equity, or otherwise, in which the defendant may have any interest as complainant, defendant, or otherwise, and including the power to continue any such pending suits, and to defend or otherwise dispose of any such proceedings, suits or actions, to settle or compound or make allowance on any or all debts now due and owing, or which may hereafter be due and owing to the defendant, as said Receiver may deem advisable or proper.

(4) That said Receiver be authorized and empowered to continue the operation of the business of the defendant, and to take and to employ and discharge and pay the compensation, salaries and wages of such attorneys, counsel, managers, superintendents, foremen, accountants, bookkeepers, salesmen, agents, laborers, mechanics, workmen, and such other employes as may be necessary and incidental to the operation of the business of the defendant as said Receiver may deem necessary or advisable in con-

nection with the custody, control, preservation, operation and management of the properties and business of the defendant; to continue existing agreements, arrangements, commitments and relations of the defendant to and with other corporations, firms and individuals to the extent that said Receiver may deem advisable until the further order of this Court; to perform the existing contracts of the defendant to the extent that performance thereof may seem to said Receiver desirable and profitable; to enter into and perform other contracts in the regular course or conduct of the business of the defendant, or otherwise; to purchase for cash or on credit supplies, equipment, material or other property as may be advisable in connection with the administration of the assets of the defendant; to pay any and all claims, for services, wages, labor, supplies, materials, equipment, or otherwise, that may be entitled to priority or which may constitute a lien upon any of the properties of the defendant; to pay the salaries and wages of agents, employes, laborers and servants of the defendant accrued or to accrue so far as said Receiver may deem necessary or expedient to secure the continuation of the services of such agents, employes, laborers and workmen; to advance moneys of the defendant from time to time to any or all of the corporations owned or controlled by the defendant, or any corporation in which the defendant may have an interest or which may be indebted to the defendant, so far as it may be deemed necessary or advisable by said Receiver in order to protect or preserve the value of the investment of the defendant in such corporation or the value of the indebtedness of such corporation to the defendant; to protect and preserve the interest of the defendant in any properties covered by the mortgages or trust deeds securing bonds, notes, or other evidences of indebtedness owned by the defendant; to protect such properties against foreclosure in the interest of the owners of bonds, notes or other evidences of indebtedness prior in lien to the bonds, notes, or other evidences of indebtedness owned by the defendant; to purchase such properties at any sales held in such foreclosure proceedings, and to redeem such properties from sale in any such foreclosure proceedings; to pay any taxes, assessments, or other governmental charges prior in lien to the lien of the bonds, notes, or other evidences of indebtedness ow-ed by said

defendant, and to redeem such properties from sale for such taxes, assessments or other governmental charges; to protect the equities owned by the defendant in real estate and to pay indebtedness accrued and which may accrue from time to time on account of bonds, notes or other evidences of indebtedness secured by a mortgage thereon, and [fol. 266] on account of taxes, assessments and other governmental charges against such premises; to purchase such properties at sale in foreclosure or other proceedings and to redeem such properties from sale in foreclosure or other proceedings; to manage and operate the buildings on properties owned by the defendant; to incur and discharge any and all expenses which it, said Receiver, may deem necessary or advisable for any of said properties; to borrow money on Receiver's certificates, or otherwise, for any of the properties hereinabove enumerated, and to incur such expenses as said Receiver may deem necessary or advisable in connection therewith, and to have the usual powers of Receivers in like cases; all until the further order of this Court in the premises.

(5) That in managing and operating the properties and business of the defendant, said Receiver be authorized to act in association with any ancillary receiver or receivers who may be appointed by any other court to take possession of and operate any other property or assets of the defendants situated outside the territorial jurisdiction of this Court and to take and to transfer and consent to the transfer from time to time of any moneys and credits to or from the territorial jurisdiction of this Court and such ancillary jurisdiction or jurisdictions to the extent that may from time to time be reasonably required, and to cooperate to the fullest extent with any such ancillary receiver in managing and operating the business and properties of the defendant.

(6) That all creditors and stockholders of the defendant and all other persons, firms and corporations are hereby enjoined from instituting or prosecuting or continuing the prosecution of any actions, suits or other proceedings at law or in equity, or under any statute, against the defendant, and from levying any attachments, executions or other process upon or against any of the properties of the defendant, or from taking or attempting to take

into their possession any part of the property of the defendant, and from doing any act whatsoever to interfere with the possession and management by said Receiver of the properties and business of the defendant, or in any way interfering with said Receiver in the discharge of its duties, or interfering in any way with the administration and disposition in this suit of the avails and properties of the defendant.

(7) That the defendant and its officers, superintendents, managers, agents and employes and all other persons, firms and corporations are hereby enjoined from interfering with, transferring, selling or disposing of any property or assets or income of the defendant, or from taking possession, or attaching or levying upon or attempting to sell or in any manner dispose of any part of the property or assets of said defendant.

(8) That Chicago Title and Trust Company, as Receiver, file forthwith with the Clerk of this Court its bond as receiver in the penal sum of ten thousand dollars, with surety or sureties to be approved by this Court, conditioned that it will well and truly perform the duties of its office, and will properly account for any and all moneys, assets and properties which may come into its hands and will abide by and perform all things which it may be directed to do herein, subject to the direction of this Court.

James H. Wilkerson, District Judge.

7:45 A. M. Chicago Daylight Saving Time, May 22, 1931.

[fol. 267] EXHIBIT "F"

Petition for the Appointment of a Coeval Receiver in Equity Action in Illinois Brought by T. H. Clarke et al.

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation, Defendant

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois:

The plaintiffs, T. H. Clarke, William Sutherland, J. Campbell Burton, Harry Boyack, James P. McGregor, Arthur Young, W. D. McGregor, F. G. Colley, W. W. Nissley, Harry L. Cavangh, Jr., Edward J. Murnane, and Eric Bloomqvist, co-partners doing business as Arthur Young & Company, come and file this, their petition, and represent to the court as follows:

First. Reference is made to the original bill of complaint filed by the plaintiffs in this cause on the 21st day of May, A. D. 1931, and said bill of complaint is made a part of this petition.

Second. Your petitioners represent that Arthur W. Draper is a person who is now, and has been for many years last past, engaged in the real estate business in the City of Chicago, State of Illinois, and has extensive knowledge of all matters pertaining to real estate bonds and mortgages; that he is especially qualified to act as a receiver for the defendant corporation; that after voting trustees were appointed for the American Bond & Mortgage Company, which voting trustees were elected by the preferred stockholders committee and the debenture com-

mittee of said Company, said Arthur W. Draper was elected as President of the Company, by reason of his familiarity with real estate bonds and mortgages, and his familiarity with the conditions of the defendant corporation and, however, previous to said election the said Arthur W. Draper had at no time had any connection whatsoever with the said defendant corporation.

Third. Your petitioners represent that the services of said Arthur W. Draper as coeval receiver with the Chicago Title and Trust Company, as receiver for the American Bond and Mortgage Company, will be of invaluable benefit to the Company, its stockholders and creditors.

Therefore, your petitioners pray that this Honorable Court appoint said Arthur W. Draper as coeval receiver with the Chicago Title and Trust Company to receive the assets of said defendant Company and to administer its affairs, in accordance with the prayer contained in the aforesaid bill of complaint.

[fol. 268] And your petitioners will ever pray, et cetera.

T. H. Clarke, William Sutherland, J. Campbell Burton, Harry Boyack, James P. McGregor, Arthur Young, W. D. McGregor, F. C. Colley, W. W. Nissley, Harry L. Cavanagh, Jr., Edward J. Murnane, and Eric Bloomqvist, Copartners as Aforesaid, by Harry L. Cavanagh, Jr., a Partner. J. Arthur Miller and Townley, Wild, Campbell & Clark, Solicitors for Petitioners.

United States of America,
Northern District of Illinois,
Eastern Division, ss:

Harry L. Cavanagh, Jr., being first duly sworn, upon oath deposes and says that he is the duly authorized agent in this behalf of plaintiffs in the above entitled cause; that he has read the foregoing petition by him subscribed for and on behalf of the petitioners, and knows the contents thereof; that he has knowledge of the facts, and that the matters and things therein alleged are true in substance and in fact.

Harry L. Cavanagh.

Subscribed and sworn to before me this 23rd day of May, A. D. 1931. Catherine Newton, Notary Public.

EXHIBIT "G"

Order Appointing Coeval Receiver in Clarke Action

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Defendant

This matter coming on to be heard upon the petition of the plaintiffs in the above entitled cause, and it appearing to the court that the appointment of a coeval receiver with the Chicago Title and Trust Company, heretofore appointed, is to the best interests of the defendant corporation, its stockholders and creditors, and the court being fully advised in the premises,

It is therefore ordered adjudged, and decreed as follows:

That Arthur W. Draper, of Chicago, Illinois, be and he is hereby appointed receiver of the above named American [fol. 269] Bond and Mortgage Company, and of all its property, rights, and assets, of every nature and wheresoever situate, owned or controlled by the defendant, or in which it has an interest, with full power and authority to take into his possession and to hold such property and assets, and to continue to manage and operate as a whole the business now conducted by the defendant.

That the said Arthur W. Draper be and he is hereby appointed coeval receiver with the Chicago Title and Trust Company, and that the rights, powers and duties of said Arthur W. Draper, as Receiver, shall be coeval and coextensive with those of the Chicago Title and Trust Company, as set forth in the order entered by this Court on the 22nd day of May, A. D. 1931, appointing said Chicago Title and Trust Company as Receiver herein.

That Arthur W. Draper, as Receiver, file forthwith with the Clerk of this Court his bond as Receiver in the penal sum of Ten Thousand Dollars ($10,000.00) with surety or sureties to be approved by this Court, conditioned that he will well and truly perform the duties of his office, and will properly account for any and all moneys, assets and properties, which may come into his hands, and will abide by and perform all things which he may be directed to do herein, subject to the direction of this Court.

(Signed) James H. Wilkerson, District Judge.

Enter- May 22, 1932.

Solicitors: J. Arthur Miller, Townley, Wild, Campbell & Clark, 105 So. La Salle Street, Chicago, Ill.

EXHIBIT "H"

Petition of Receivers in the Equity Action in Illinois Brought by T. H. Clark et al. for Leave to Employ Counsel

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiff,

vs.

AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Defendant

To the Honorable James H. Wilkerson, one of the judges of said court:

Now comes Chicago Title & Trust Company, a corporation, and Arthur W. Draper, and respectfully represent unto the court that they were heretofore on the 22nd day of May, 1931, duly appointed receivers in the above entitled cause for said defendant corporation, and have duly qualified as such receivers by filing their respective bonds as required by the orders of their appointment.

Your petitioners further represent unto the court that in and about the performance of their duties as such receivers, and in the preparation and presentation to this Honorable

Court from time to time of such petitions as shall be required in connection with the administration of this estate, it will be necessary for them to employ counsel to assist them.

[fol. 270] Your petitioners further represent unto the court that they are desirous of employing as their counsel, Defrees, Buckingham, Jones & Hoffman and Kirkland, Fleming, Green & Martin, both of Chicago, Illinois, whom they believe to be well qualified to act as their counsel in this matter, and who do not represent any interests adverse to the interest of your petitioners and the respective parties to this cause.

Wherefore your petitioners pray that an order may be entered herein authorizing and directing them to employ the law firms of Defrees, Buckingham, Jones & Hoffman and Kirkland, Fleming, Green & Martin as their counsel in this matter.

Chicago Title & Trust Company, a Corporation, and Arthur W. Draper, Receivers, by Charles Carroll, Their Duly Authorized Agent in This Behalf.

State of Illinois,
County of Cook, ss:

Charles Carroll, being first duly sworn, deposes and says that he is the duly authorized agent in this behalf of the Chicago Title & Trust Company, a corporation, and Arthur W. Draper, receivers in the above entitled cause; that he has, on behalf of said receivers, executed the foregoing petition; that he knows the contents thereof, and that the same is true.

Charles Carroll.

Subscribed and sworn to before me this 25th day of May, A. D. 1931. Adrian L. Hoover, Notary Public. (Seal.)

EXHIBIT "I"

Order Authorizing Receivers in the Equity Action in Illinois Brought by T. H. Clarke et al. to Employ Counsel

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiff,

vs.

AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Defendant

This cause coming on this day to be heard upon the petition of Chicago Title & Trust Company, a corporation, and Arthur W. Draper, receivers in the above entitled cause for said defendant corporation, for leave to employ counsel, and the court having considered said petition, having heard the arguments of counsel, and being fully advised in the premises, and it appearing to the court that all parties in interest have had due notice of the presentation of said petition.

It is ordered that said receivers be and they are hereby authorized and directed to employ the law firms of Defrees, Buckingham, Jones & Hoffman and Kirkland, Fleming, Green & Martin as their counsel in the above entitled cause.

Dated this 26th day of May, 1931.

Enter.

James H. Wilkerson, Judge.

[fol. 271] EXHIBIT "J"

Petition of Receivers in the Equity Action in Illinois Brought by T. H. Clarke et al. for Leave to Defend Petitions in Bankruptcy Brought in Maine and in Illinois Against the American Bond and Mortgage Company

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation, Defendant

To the Honorable James H. Wilkerson, one of the judges of said court:

Now comes Chicago Title & Trust Company, a corporation, and Arthur W. Draper, heretofore by order of this court entered herein on the 22nd day of May, 1931, appointed receivers for said defendant corporation, and respectfully represent unto the court that at five o'clock P. M. on May 21, 1931, and subsequent to the filing of the bill of complaint herein, a petition was filed in this court, sitting as a court of bankruptcy, as case No. 47250, by Bellamy-Neff Company, a corporation, Jackson Towers Building Corporation, a corporation, Walker G. Everett and R. W. Kenyon, creditors of said defendant corporation, against said corporation seeking the entry of an order adjudicating it a bankrupt, and that at the opening of court in the forenoon on May 22, 1931, an application was made to this court for the appointment of a receiver in bankruptcy for said company, which petition was thereupon set for hearing before this court on June 5, 1931.

Your receivers further represent unto the court that they are informed, and upon such information state the fact to be that at the opening of court in the forenoon on May

25, 1931, a petition was filed by certain other creditors of said defendant corporation against said corporation in the District Court of the United States for the District of Maine, sitting at Portland, Maine, seeking the entry of an order adjudicating said corporation a bankrupt, and that thereupon an application was made to said court for the appointment of a receiver in bankruptcy for said company; that your receivers are not advised as to what, if any disposition has been made of said application.

Your receivers further represent unto the court that upon their appointment by this court as receivers herein, they took possession of all of the property, assets and effects of said defendant corporation located within this district, and have since taken steps to take possession of the property, assets and effects of said corporation located without this district; that they are informed and upon such information state the fact to be, that said corporation at the time of the filing of the aforesaid petition in bankruptcy — solvent within the meaning of the provisions of the bankruptcy laws of the United States, and that under General Order in Bankruptcy VI adopted and established by the Supreme Court of the United States, the petition in bankruptcy filed within this district against said corporation takes precedence over that filed against it in the Dis-[fol. 272] trict Court of the United States for the District of Maine, and shall be first heard, and your receivers believe the entry of orders in either of said proceedings appointing a receiver or receivers for said defendant corporation and adjudicating said corporation a bankrupt would be very prejudicial to the rights of all of the creditors of said corporation, and should be strenuously resisted, and that they should be authorized and directed by this court to join with said corporation in defending against the petitions in bankruptcy filed against said defendant corporation as aforesaid.

Wherefore, your receivers pray that an order may be entered herein authorizing and directing them to join with said defendant corporation in defending against the aforesaid petitions in bankruptcy filed in the District Court of the United States for the District of Maine, and authorizing and directing them to expend such moneys and take such proceedings in connection therewith as they shall

deem necessary to defeat said actions and prevent the entry of orders in both proceedings appointing receivers in bankruptcy for said corporation and adjudicating it a bankrupt.

Chicago Title & Trust Company, a Corporation, and Arthur W. Draper, Receivers, by Charles Carroll, Their Duly Authorized Agent in This Behalf.

STATE OF ILLINOIS,
County of Cook, ss:

Charles Carroll, being first duly sworn, deposes and says that he is the duly authorized agent in this behalf of the Chicago Title & Trust Company, a corporation, and Arthur W. Draper, receivers in the above entitled cause; that he has, on behalf of said receivers, executed the foregoing petition; that he knows the contents thereof, and that the same is true.

Charles Carroll.

Subscribed and sworn to before me this 25th day of May, A. D. 1931. Adrian L. Hoover, Notary Public. (Seal.)

[fol. 273] EXHIBIT "K"

Order in the Equity Action in Illinois Brought by T. H. Clarke et al. Authorizing the Receivers to Defend the Bankruptcy Petitions Brought in Maine and in Illinois Against the American Bond and Mortgage Company—Filed May 26, 1931

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Tuesday, May 26, A. D. 1931.

Present: Hon. James H. Wilkerson, District Judge.

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation, Defendant

This cause coming on this day to be heard upon the petition of Chicago Title & Trust Company, a corporation, and

Arthur W. Draper, receivers for said defendant corporation, for leave to defend against certain petitioners in bankruptcy filed against said corporation, and the court having considered said petition, having heard the arguments of counsel, and being fully advised in the premises, and it appearing to the court that all parties in interest have had due notice of the presentation of said petition; and it further appearing to the court that since the filing of the bill of complaint herein certain petitions have been filed in this court, sitting as a court of bankruptcy, and in the District Court of the United States for the District of Maine, seeking to have said defendant corporation adjudicated a bankrupt; and it further appearing to the court that said proceedings, and each of them, are still pending and undisposed of, and that it is to the best interests of the creditors of said defendant corporation that the entry of orders in either of said proceedings appointing a receiver or receivers for said defendant corporation and adjudicating said corporation a bankrupt be strenuously resisted, and that the Chicago Title & Trust Company and Arthur W. Draper, as receivers herein, should be authorized and directed by this court to join with said defendant corporation in defending against the petitions in bankruptcy filed against said defendant corporation, as aforesaid.

It is ordered that said receivers be and they are hereby authorized and directed to join with said defendant corporation in defending against the aforesaid petitions in bankruptcy filed aganst said corporation in this court and in the District Court of the United States for the District of Maine, and

It is further ordered that said receivers be and they are hereby authorized and directed to expend such moneys and take such proceedings in connection with the defense of said petitions as they shall deem necesary to defeat the same and prevent the entry of orders in either of said proceedings appointing a receiver or receivers in bankruptcy for said corporation, and adjudicating said corporation a bankrupt.

Dated this 26th day of May, 1931.

Enter.

James H. Wilkerson, Judge.

[fol. 274] EXHIBIT "L"

Petition of the Receivers in the Equity Action in Illinois Brought by T. H. Clarke et al. for Leave to Accept an Offer Made for Certain First-mortgage Real Estate Bonds

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Defendant

To the Honorable James H. Wilkerson, one of the judges of said court:

Now come Chicago Title & Trust Company, a corporation, and Arthur W. Draper, heretofore by order of this court entered herein on the 22nd day of May, 1931, appointed receivers for said defendant corporation, and respectfully represent unto the court that among the assets of said corporation coming to the possession of your receivers are the following first mortgage real estate bonds in the total principal sum of $4800.00, secured by trust deed upon the property known as the Biltmore Apartment Hotel, located at the northwest corner of Drexel Boulevard and Forty-second Street, Chicago, Illinois:

Bonds Nos. 176, 244, 246, 249, 250, 252, 253, 272, 273, 292, 294, 299, 300, 301, 306, 309, 310, 311, each for the principal sum of $100.00, and Bonds Nos. 326, 392, 393, 400, 411 and 412, each for the principal sum of $500.00.

Your receivers further represent unto the court that said bonds are a part of an issue of $175,000.00, of which $110,000.00 is now outstanding and unpaid; that default occurred under the terms of said trust deed in the payment of the final maturity of principal amounting to $110,000.00, which fell due on May 1, 1930, and in payment of the interest thereafter accruing thereon at the rate of seven per cent. per annum, and in payment of the taxes for the years 1928 and

1929; that on September 3, 1930, the Chicago Title & Trust Company, as trustee under said trust deed, because of the defaults then existing, caused a bill for the absolute foreclosure of said mortgage to be filed in the Circuit Court of Cook County, Illinois, which suit is still pending; that on May 19, 1931, a plan for the re-organization of said property was submitted to all holders of outstanding bonds secured by said trust deed by a Committee organized for the protection of holders of said bonds, a copy of which plan is hereto attached, marked "Exhibit A", and made a part hereof, which plan, inter alia, provides that no bonds will be accepted for deposit thereunder after June 8, 1931, and that under the plan, if consummated, depositing bondholders will receive within a very short time after June 10, 1931, an amount in cash equalling approximately seventy-two per cent. of the face principal amount of bonds so deposited, and further provides that if the Committee cannot deposit at least eighty per cent. of the bonds outstanding with an escrow agent on or before June 10, 1931, Helen M. Browne, the wife of the former owner and maker of the [fol. 275] mortgage and the party making said offer, reserves the option of either accepting a less percentage of said bonds and to pay therefor seventy-five cents on the Dollar, without interest, plus the sum of $5,000.00, toward the payment of the expenses incurred in the foreclosure proceedings above mentioned and toward the expenses of said Committee and its depositaries, or of withdrawing her offer.

Your receivers further represent unto the court that the bonds of said issue owned by said American Bond and Mortgage Company, as aforesaid, have not been deposited with said Committee under said plan of reorganization; that your receivers are informed, and upon such information state the fact to be, that certain conflicting interests have been purchasing some of the outstanding bonds secured by said trust deed at a price less than the amount realizable by holders of said bonds under said plan, if consummated; that at the present time but sixty-nine per cent of the outstanding bonds have been deposited with said Committee, and that there is a possibility that said plan may not become effective, and that the offer of said Helen M. Browne may be withdrawn, and that should said plan not be consummated, and should said offer be withdrawn,

the amount realizable by your receivers for the aforesaid bonds held by them, either through sale or through the foreclosure of said trust deed, will, in their opinion, be far less than the amount now realizable by your receivers by acceptance of the offer hereinafter referred to received by them for the purchase of said bonds.

Your receivers further represent unto the court that they have received from Speier, Mitten & Ward, Inc., dealers in investment securities, located at 120 South LaSalle Street, Chicago, Illinois, a written offer for the aforesaid bonds held by your receivers of seventy-one and one-half per cent, less accrued interest, such offer to be accepted or rejected on or before June 2, 1931; that said offer is within one-half of one per cent of the amount realizable by your receivers for said bonds should the aforesaid plan of reorganization be consummated; that said offer is the best now obtainable for said bonds; and your receivers believe that because of the possibility of said plan of reorganization being not effected it is to the best interests of this estate that the aforesaid offer be now accepted.

Wherefore your receivers pray that an order may be entered herein authorizing and directing them to forthwith accept the offer of said Speier, Mitten & Ward, Inc., and upon payment to your receivers of seventy-one and one-half per cent of the principal amount of the bonds so held by them, to deliver said bonds to said Speier, Mitten & Ward, Inc.

Chicago Title & Trust Company, a Corporation, and Arthur W. Draper, Receivers, by Charles Carroll, Their Duly Authorized Agent in This Behalf.

[fol. 276] State of Illinois,
County of Cook, ss:

Charles Carroll, being first duly sworn, deposes and says that he is the duly authorized agent in this behalf of the Chicago Title & Trust Company, a corporation, and Arthur W. Draper, receivers, in the above entitled cause; that he has, on behalf of said receivers, executed the foregoing petition; that he knows the contents thereof, and that the same is true.

Charles Carroll.

Subscribed and sworn to before me this 30th day of May, A. D. 1931. Adrian S. Hoover, Notary Public.

EXHIBIT "M"

Order in the Equity Action in Illinois Brought by T. H. Clarke et al. Authorizing the Receivers to Accept the Offer Made for Certain First-mortgage Real Estate Bonds

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Defendant

This cause coming on this day to be heard upon the petition of Chicago Title & Trust Company, a corporation, and Arthur W. Draper, receivers for said defendant corporation, for leave to accept the offer made for certain first mortgage real estate bonds belonging to said defendant corporation, and the court having considered said petition, having heard the arguments of counsel and being fully advised in the premises, and it appearing to the court that all parties in interest have had due notice of the presentation of said petition; and it further appearing to the court that among the assets of said defendant corporation coming to the possession of said receivers are the following first mortgage real estate bonds in the total principal sum of $4,800.00, secured by trust deed upon the property known as Biltmore Apartment Hotel, located at the northwest corner of Drexel Boulevard and Forty-second Street, Chicago, Illinois:

[fol. 277] Bonds Nos. 176, 244, 246, 249, 250, 252, 253, 272, 273, 292, 294, 299, 300, 301, 306, 309, 310, 311, each for the principal sum of $100.00, and Bonds Nos. 326, 392, 393, 400, 411 and 412, each for the principal sum of $500.00;

and it further appearing to the court that said bonds are part of an issue of $175,000.00, of which $110,000.00 is now outstanding and unpaid, and that default having occurred on May 1, 1930, in the payment of said principal sum of $110,000.00 and interest thereon from and after that date, and in the payment of the taxes for the years 1928 and 1929 upon said property, a bill to foreclose said trust deed was on September 3, 1930, filed in the Circuit Court of Cook County, Illinois, by the Chicago Title & Trust Company, as trustee thereunder, which suit is still pending; and it further appearing to the court that on May 19, 1931, a certain plan for the reorganization of said property, copy of which plan is attached to and made a part of said petition, was submitted to all holders of outstanding bonds secured by said trust deed by a committee organized for the protection of holders of said bonds, under the terms of which plan, if consummated, bondholders depositing their bonds with said committee on or before June 8, 1931, will receive within a very short time after June 10, 1931, an amount in cash equalling approximately seventy-two per cent of the full principal amount of the bonds so deposited; and it further appearing to the court that the foregoing bonds of said issue owned by said defendant corporation have not been deposited with said committee; and that there is a possibility that said plan of reorganization may not become effective, and that the offer made under said plan by Helen M. Browne, the wife of the former owner of said property and the maker of said mortgage, may be withdrawn; and it further appearing to the court that said receivers have received from Speier, Mitten & Ward, Inc., dealers in investment securities, located at 120 South LaSalle Street, Chicago, Illinois, a written offer to purchase the aforesaid bonds held by said receivers at seventy-one and one-half per cent, less accrued interest, such offer to be accepted or rejected on or before June 2, 1931; and it further appearing to the court that said offer is the best now obtainable for said bonds and is within one-half of one per cent of the amount realizable by said receivers for said bonds should the aforesaid plan of reorganization be consummated, and is far less than the amount realizable for said bonds, either through sale or through the foreclosure of said trust deed, should said plan not be consummated and should the offer of said Helen M. Browne be withdrawn; and it further

appearing to the court that it is to the best interests of this estate that the aforesaid offer of Speier, Mitten & Ward, Inc., be now accepted.

It is ordered that said receivers be and they are hereby authorized and directed to forthwith accept the aforesaid offer of said Speier, Mitten & Ward, Inc., and

It is further ordered that said receivers be and they are hereby authorized and directed, upon payment to them by said Speier, Mitten & Ward, Inc., of seventy-one and one-half per cent of the principal amount of the bonds so held by said receivers, to deliver said bonds to said Speier, Mitten & Ward, Inc.

Dated this 1st day of June, 1931.

Enter.

James H. Wilkerson, Judge.

[fol. 278] EXHIBIT "N"

Petition of the Receivers in the Equity Action in Illinois Brought by T. H. Clarke et al. for Leave to Make Payment of Balance Due to Messrs. Crosby & Murphy, Accountants

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Defendant

To the Honorable James H. Wilkerson, one of the judges of said court:

Now comes Chicago Title & Trust Company, a corporation, and Arthur W. Draper heretofore by order of this court entered herein on the 22nd day of May, 1931, appointed receivers of said defendant corporation and respectfully represent unto the court that on the 14th day of July, 1930, a bill of complaint was filed against the American Bond & Mortgage Company in the Supreme Judicial

Court of the State of Massachusetts by Herbert W. Weeks, and certain other holders of debentures issued by said American Bond & Mortgage Company inter alia for the appointment of a receiver in equity to take possession of the properties, assets and effects of said American Bond and Mortgage Company; that thereafter on August 14, 1930, an amended bill of complaint was filed in said cause and on August 27, 1930, a hearing was had before the Honorable William R. Pattangall, Chief Justice of said court, upon a rule theretofore entered by said court against said American Bond and Mortgage Company to show cause why a receiver should not be appointed for said company, and thereupon said matter was taken under advisement by said judge and an order entered by said court continuing the hearing upon said rule to show cause generally; that on or about March 17, 1931, said judge being desirous of securing full and complete information as to the financial condition of said American Bond and Mortgage Company requested said company to cause an audit of its books to be made and said company did thereupon, upon the recommendation of said judge, employ the firm of Crosby & Murphy certified public accountants of Worcester, Mass., to make an examination of its books as at February 28, 1931; that said accountants did during the period from March 17, 1931, to May 11, 1931, inclusive, make an examination of the books of said company and did prepare and submit to said American Bond & Mortgage Company and to said judge a full and complete audit of said books as at February 28, 1931, copy of which audit dated as of April 15, 1931, is now in the possession of your receivers; that thereupon said accountants forwarded to said American Bond & Mortgage Company a bill for the services rendered and expenses [fol. 279] incurred by them in and about the preparation of said audit in the amount of $9,707.06, which bill as to amount has been approved by said judge, and upon which there was at the time of the appointment of your receivers and now is a balance due and unpaid the sum of $5,207.06.

Your receivers further represent unto the court that it is absolutely necessary for the proper conduct of said receivership that the financial condition as of the date of the appointment of your receivers, of said American Bond & Mortgage Company and of the following subsidiaries of said American Bond & Mortgage Company be determined:

American Trust & Safe Deposit Company, an Illinois corporation;
Americo Corporation, a Delaware corporation;
Affiliated Hotels Bureau, Inc., a Delaware corporation;
President Monroe Corporation, a New York corporation;
Alden Hotel Company, an Illinois corporation;
Fidelity Safety Vaults, an Illinois corporation;
Hotel Graemere Inc., a Delaware corporation;
Hotel Churchill Inc., an Illinois corporation;
Underwriters & Distrib[illegible]rs Securities Co., Inc., a Delaware corporation;
Hotel Grant Inc., a Michigan corporation, and

Brooklyn Towers Hotel Inc., a New York corporation;
and that an audit of the books of said American Bond & Mortgage Company and its said subsidiaries be prepared as of the close of business on May 21, 1931, the day preceding the appointment of your receivers herein, and your receivers believe that rather than have an entirely new audit made by other accountants it would be to the best interests of all parties concerned and would be far more economical if your receivers be permitted by this court to adopt the audit made by said Crosby & Murphy of the books of said American Bond and Mortgage Company as at February 28, 1931, and make payment to said accountants of the balance due them for said audit and because of their familiarity with the affairs and books and records of said company to employ said accountants to continue said audit to the close of business May 31, 1931, and make an audit of the books of said subsidiary corporations as of said last mentioned date.

Your receivers further represent unto the court that said accountants have subject to the approval of this court agreed to perform the services required to prepare the aforesaid audits and have estimated the total cost of said audits including all expense incident thereto will not exceed $11,000.00.

Your receivers further represent unto the court that they believe said Crosby & Murphy to be thoroughly competent and reliable and that the estimated price of such audits is reasonable, and that your receivers should be authorized to employ them to make the same.

Wherefore your receivers pray that an order be entered herein authorizing and directing them to adopt the audit [fol. 280] made by said Crosby & Murphy of the books of said American Bond & Mortgage Company as at February 28, 1931, and make payment to said accountants out of the moneys in their hands belonging to said American Bond & Mortgage Company of the sum of $5,207.06 the balance due them as aforesaid for services rendered and expenses incurred in the preparation of said audit and to employ said accountants to continue said audit to the close of business on May 21, 1931, and make an audit as of said last mentioned date of the books of the following subsidiaries of said American Bond & Mortgage Co.:

American Trust & Safe Deposit Company, an Illinois corporation,
Americo Corporation, a Delaware corporation,
Affiliated Hotels Bureau, Inc., a Delaware corporation,
President Monroe Corporation, a New York corporation,
Alden Hotel Company, an Illinois corporation,
Fidelity Safety Vaults, an Illinois corporation,
Hotel Graemere Inc., a Delaware corporation,
Hotel Churchill Inc., an Illinois corporation,
Underwriters & Distributors Securities Co. Inc., a Delaware corporation,
Hotel Grant Inc., a Michigan corporation, and
Brooklyn Towers Hotel Inc., a New York corporation,

and to pay said accountants therefor out of the moneys in the possession of your receivers belonging to said American Bond & Mortgage Company not to exceed the sum of $11,000.00.

Chicago Title & Trust Company, a Corporation, and
Arthur W. Draper, Receivers, by Charles Carroll,
Their Duly Authorized Agent in This Behalf.

State of Illinois,
County of Cook, ss:

Charles Carroll, being first duly sworn, deposes and says that he is the duly authorized agent in this behalf of the Chicago Title & Trust Company, a corporation, and Arthur W. Draper, receivers in the above entitled cause; that he has on behalf of said receivers executed the foregoing

petition, that he knows the contents thereof, and that same is true.

Charles Carroll.

Subscribed and sworn to before me this 10th day of June, 1931. Helen L. Dahm, Notary Public.

[fol. 281] EXHIBIT "O"

Order in the Equity Action in Illinois Brought by T. H. Clarke et al. Authorizing the Receivers to Make Payment of Balance Due to Messrs. Crosby & Murphy, Accountants, etc.—Filed June 11, 1931

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10539

T. H. CLARKE et al., Plaintiffs,

vs.

AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Defendant

This cause coming on this day to be heard upon the petition of Chicago Title & Trust Company, a corporation, and Arthur W. Draper, receivers for said defendant corporation, for leave to make payment of the balance due certain accountants for an audit made by them of the books of said defendant corporation as at February 28, 1931, and to employ said accountants to continue said audit to the date of the appointment of said receivers, and the court having considered said petition, having heard the arguments of counsel, and being fully advised in the premises, and it appearing to the court that all parties in interest have had due notice of the presentation of said petition; and it further appearing to the court that on or about March 17, 1931, the Honorable William R. Pattengall, Chief Justice of the Supreme Judicial Court of the State of Maine, before whom certain proceedings were then pending for the appointment of a receiver in equity to take possession of the property, assets and effects of said American Bond and Mortgage Company, being desirous of securing full and

complete information as to the financial condition of said Company, requested said Company to cause an audit of its books to be made, and that upon the recommendation of said Judge, said American Bond and Mortgage Company did thereupon employ the firm of Crosby & Murphy, certified public accountants, of Worcester, Massachusetts, to make an examination of the books of said Company as at February 28, 1931; and it further appearing to the court that said accountants, pursuant to said employment, did prepare and submit to said Company and said Judge a full and complete audit of said books as at February 28, 1931, copy of which audit, dated as of April 15, 1931, is now in the possession of said receivers, and did forward to said American Bond and Mortgage Company a bill for the services and expenses incurred by them in and about the preparation of said audit in the amount of $9,707.06 which bill as to amount has been approved by said Judge, and on which there was at the time of the appointment of said receivers, and now is, a balance due and unpaid of the sum of $5,207.06; and it further appearing to the court that it is necessary to the proper conduct of said receivership that the financial condition as of the date of the appointment of said receivers of said American Bond and Mortgage Company and of the following subsidiaries of said American Bond and Mortgage Company, be determined:

American Trust & Safe Deposit Company, an Illinois corporation;
[fol. 282] Americo Corporation, a Delaware corporation;
Affiliated Hotels Bureau, Inc., a Delaware corporation;
President Monroe Corporation, a New York corporation;
Alden Hotel Company, an Illinois corporation;
Fidelity Safety Vaults, an Illinois corporation;
Hotel Graemere, Inc., a Delaware corporation;
Hotel Churchill, Inc., an Illinois corporation;
Underwriters & Distributors Securities Company, Inc., a Delaware corporation;
Hotel Grant, Inc., a Michigan corporation, and Brooklyn Towers Hotel, Inc., a New York corporation

and an audit of the books of said American Bond and Mortgage Company and its said subsidiaries be prepared as of the close of business on May 21, 1931, the day preceding the appointment of said receivers herein, and that rather

than have an entirely new audit made by other accountants, it is to the best interests of all parties concerned, and would be far more economical to this estate if said receivers should be permitted to adopt the audit made by said Crosby & Murphy of the books of said American Bond and Mortgage Company as at February 28, 1931, and make payment to said accountants of the balance due them for said audit, and because of their familiarity with the affairs and books and records of said company, to employ them to continue said audit to the close of business on May 21, 1931, and make an audit of said subsidiary corporations as of said last mentioned date; and it further appearing to the court that the said accountants have, subject to the approval of this court, agreed to perform the services required in the preparation of the aforesaid audits, and have estimated that the total cost thereof, including all expenses incident thereto, will not exceed $11,000.00; and it appearing to the court that said Crosby & Murphy are thoroughly competent and reliable, and that the estimated price of said audits is reasonable, and that said receivers should be authorized to employ them to make said audits,

It is ordered that said receivers be and they are hereby authorized and directed to adopt the audit made by said Crosby & Murphy of the books of said American Bond and Mortgage Company as at February 28, 1931, and make payment to said accountants out of the moneys in the hands of said receivers belonging to said American Bond and Mortgage Company of the sum of $5,207.06, the balance due said accountants for services rendered and expenses incurred in the preparation of said audit, and to employ said accountants to continue said audit to the close of business on May 21, 1931, and make an audit as of said last mentioned date of the books of the following subsidiaries of said American Bond and Mortgage Company:

American Trust & Safe Deposit Company, an Illinois corporation,
Amerco Corporation, a Delaware corporation,
Affiliated Hotels Bureau, Inc., a Delaware corporation,
President Monroe Corporation, a New York corporation,
Alden Hotel Company, an Illinois corporation,
Fidelity Safety Vaults, an Illinois corporation,
Hotel Graemere, Inc., a Delaware corporation,

Underwriters & Distributors Securities Company, Inc., a Delaware corporation,
[fol. 283] Hotel Grant, Inc., a Michigan Corporation, and Brooklyn Towers Hotel, Inc., a New York corporation,

and pay said accountants therefor out of the moneys in the possession of said receivers belonging to said American Bond and Mortgage Company not to exceed the sum of $11,000.00.

Dated this 11th day of June, 1931.

Enter:

James H. Wilkerson, Judge.

EXHIBIT "P"

Denial of Bankruptcy by the American Bond and Mortgage Company in the Illinois Involuntary Bankruptcy Proceeding—Filed May 29, 1931.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 47250

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Alleged Bankrupt

At Chicago, in said District, on the 29th Day of May, 1931

And now appear said American Bond and Mortgage Company, a corporation, by H. E. Ambler, its attorney, and Chicago Title & Trust Company, a corporation, and Arthur W. Draper, the duly appointed, qualified and acting receivers for said American Bond and Mortgage Company, a corporation, the alleged bankrupt, under and by virtue of a certain order entered on May 22, 1931, by this court, sitting as a court of equity, in the case of "T. H. Clarke et al. vs. American Bond and Mortgage Company, a corporation", Equity No. 10539, by Defrees, Buckingham, Jones & Hoffman, and Kirkland, Fleming, Green & Martin, their attorneys, and deny that said American Bond and Mortgage Company, a corporation, has committed the acts [fol. 284] of bankruptcy set forth in the petition for adjudication filed herein on the 21st day of May, 1931, or that

said corporation is insolvent, and aver that said corporation should not be declared bankrupt for any cause in said petition alleged, and demand that this may be inquired of by a jury.

American Bond and Mortgage Company, by H. E. Ambler, Its Attorney. Chicago Title & Trust Company, a Corporation, and Arthur W. Draper, Receivers as Aforesaid, by Defrees, Buckingham, Jones & Hoffman, and Kirkland, Fleming, Green and Martin, Their Attorneys. H. E. Ambler, Attorney for American Bond and Mortgage Company. Defrees, Buckingham, Jones & Hoffman, and Kirkland, Fleming, Green & Martin, Attorneys, for said Receivers.

EXHIBIT "Q", BALANCE-SHEET OF THE AMERICAN BOND AND MORTGAGE COMPANY AS AT FEBRUARY 28, 1931

American Bond and Mortgage Company

Balance-sheet at February 28, 1931

Assets

Investment & Advances to Bldgs. & Bldg. Cos.—Schedule "1":			
Investment in Real Estate—Schedule "1":			
Represented by Stock Ownership	$5,438,859.22		
Represented by Equity "	584,113.42		
		$6,022,972.64	
R. E. Bonds Unmatured—Schedule "1-A":			
First Mortgage	$1,317,337.27		
Second "	1,053,231.33		
Extended and Subordinated	255,169.82		
		2,625,738.42	
Matured Bonds and Advances on Interest Coupons:			
Bonds—Schedule "1-B"	$1,122,115.47		
Coupons—Schedule "1-C"	1,181,299.44		
Certificates of Deposit on Defaulted Issues for 1st & 2nd Mortgage Bonds and Coupons and Miscellaneous Advances—Schedule "1-D"		1,886,941.35	
Junior Mortgages—Bldgs. upon which First Mtge. Bond Issues are Outstanding—Schedule "1-E"		453,475.20	
Notes Receivable—Unsecured—Sch. "1-F"		219,945.00	
Advances for Ins., Taxes, etc.—Sch. "1-G"		100,430.81	
			$13,612,918.33

Investment in Stocks of and Advances to Subsidiary Companies:			
American Trust & Safe. Dep. Co.—Com. Stk.		$1,032,000.00	
Other Stocks and Advances		30,002.52	
			1,062,002.52
Miscellaneous Stocks, Bonds & Mtges.—Sched. "2":			
Stocks and Bonds		$87,470.54	
Mortgages		26,753.50	
			114,224.04
Government Bonds (On dep. with Royal Indemnity Insurance Co. to cover ins. Bonds—see contra)			33,000.33
Notes Receivable:			
Secured and Partially Secured		$58,347.30	
Unsecured—Schedule "1-F"		30,003.30	
			88,350.60
Miscellaneous Other Assets:			
Cash and Working Funds on Hand and in Banks, and cash on deposit with Chicago Title & Trust Co. Reserved for benefit of Bank Creditors		$31,387.24	
Accrued Int. on Bonds and Mortgages		22,026.23	
Accounts Receivable—Schedule "3"	$68,253.19		
Less: Reserve for Doubtful Accts.	48,000.00		
		20,253.19	
Bonds Reserved against Sales on Systematic Investment Plan		12,067.00	
Cash Surrender value Life Insurance		9,700.25	
			95,433.91
Furniture and Fixtures		$404,225.05	
Less: Reserve for Depreciation		272,051.57	
			132,173.48
Unamortized Discount and Expense on Debenture Bonds			264,469.44
			$15,402,572.65

[fol. 285] Liabilities

Notes Payable—Schedule "4":			
Banks		$1,803,347.21	
Others		117,598.00	
			$1,920,945.21
Accounts Payable and Accruals:			
Accounts Payable—Schedule "5"		$98,146.50	
Payments Rec'd on Systematic Inv. Plan		8,533.52	
Accrued Interest on Debenture Bonds (Period Sept. 1, 1929 to Feb. 28, 1931)		474,492.50	
Accrued Int. on Notes Pay.—Schedule "4"		225,927.23	
			607,399.75
Loan on Life Insurance Policy			9,700.25
Due to Subsidiary Companies			17,559.75
Reserves:			
Legal Fees		$25,000.00	
Confiscation of Government Bonds		33,000.33	
			58,000.33
Funded Debt:			
6½% Sinking Fund Deben. due Mar. 1, 1937:			
Authorized and Issued	$5,000,000.00		
Less: Retired through Sinking Fund	100,000.00		
		$4,900,000.00	
Less: In Treasury		31,000.00	
			4,869,000.00
Capital Stock:			
Preferred—7% Cumulative:			
Authorized & Issued—70,000 shs. of $100 par value	7,000,000.00		
Less: In Treasury	137,100.00		
		$6,862,900.00	

Common:			
Authorized—15,000 shares of $100 par value	$1,500,000.00		
Issued	$1,475,200.00		
Less: In Treasury	4,500.00		
		1,470,700.00	
			8,333,600.00
Deficit—Exhibit "B"			413,632.64
			$15,402,572.65

NOTE—Dividends on Preferred Stock in arrears from April 1, 1929 Contingent Liabilities of an indeterminable amount.

[fol. 287] EXHIBIT "L" TO PETITION

This agreement, dated September 10, 1929, by and between the American Bond and Mortgage Company (hereinafter called the "company"), party of the first part, and such banking and financial institutions (hereinafter called "bank creditors") as may become parties signatory hereto and are owners and holders of promissory notes executed by the company, parties of the second part, and the individuals composing the committee as hereinafter set forth, parties of the third part, witnesseth:

Whereas, the company is indebted to various banking and financial institutions in the sum of approximately Two Million Five Hundred Thousand ($2,500,000) Dollars; and

Whereas, all the parties signatory hereto believe the company to be financially solvent but in need of extensions of time in which to meet and pay its indebtedness; and

Whereas, it is desirable and necessary that the interest of such bank creditors as may become parties hereto be protected and it is deemed advisable that this can be accomplished effectively by the appointment of a bank creditors' committee; and

Whereas, the following named persons as individuals and not as officers of the banks they represent, namely:

Edward Eagle Brown, Vice President, First National Bank, Chicago, Illinois.

W. T. Perkins, Vice President, Chatham Phenix National Bank and Trust Company, New York, New York.

[fol. 288] A. R. Floreen, Vice President, Central Trust Company of Illinois, Chicago, Illinois.

Frank G. Smith, President, Guaranty State Bank, Detroit, Michigan.

Graham Coventry, President, Utica Trust and Deposit Company, Utica, New York.

A. W. Pickford, Vice President, Philadelphia National Bank, Philadelphia, Pennsylvania,

have agreed to act as such committee under the terms of this agreement and to represent and protect the interest of such bank creditors of the company as may become parties signatory hereto, and Edward Eagle Brown has agreed to serve as chairman of said committee:

Now, therefore, in consideration of the advantages and benefits which will or may accrue to the parties hereto respectively from the union of interests and joinder of action

and to protect and enforce their rights and of the sum of One ($1) Dollar and other good and valuable considerations each to the other interchangeably given and received, the parties hereto do hereby each for himself and not one for the other, or any of the others, agree with each other as follows, that is to say:

First. A copy of this agreement signed by the company and the committee and lodged with the chairman of the committee shall be held and taken to be the original agreement. The agreement may, however, be executed in any number of counterparts, all of which shall be deemed to be but one original instrument.

Second. No bank creditor, who is or shall become a party hereto, shall commence or prosecute any legal proceedings [fol. 289] of any kind whatsoever against the company for a period of one year from date of this agreement without the written consent either of the Chicago Title and Trust Company or of any three members of the committee.

Third. No bank creditor shall sell any collateral pledged as security to the indebtedness of the company within the period of one year from date of this agreement without the written consent either of the Chicago Title and Trust Company, Chicago, Illinois, or of any three members of the committee. The purpose of this paragraph is to prevent liquidation of collateral at sacrifice prices but it is the present intention and purpose of the committee to authorize the sale of collateral at prices satisfactory to the committee as rapidly as sales can be arranged with the view of liquidating the bank indebtedness of the company and all bank creditors who are signatory parties hereto are requested to submit offers of sale to the committee as rapidly as possible. In case any three members of the committee consent to the sale of any collateral by any bank creditor they shall give simultaneous or prior information of such consent to the Chicago Title and Trust Company.

Fourth. The company will upon request execute new collateral demand notes to each and every bank creditor becoming a party to this agreement for the indebtedness owing by the company to each respective bank creditor secured by the collateral held by such respective banks

which notes shall bear interest at the rate of seven per cent annually, payable monthly.

Fifth. The members of the committee shall not be en- [fol. 290] titled to any compensation for their services but they shall be entitled to reimbursement from the company and the company hereby agrees to pay all reasonable expenses and disbursements made by the committee and each and every member thereof, expended and incurred in matters pertaining to this agreement and the subject matter thereof. The committee is hereby authorized to employ such agents, servants, attorneys, solicitors, firms, concerns or individuals as the committee in its discretion may deem expedient, necessary or proper, and the company hereby agrees to pay the reasonable compensation, expenses and/or disbursements of such agents, servants, attorneys, solicitors, firms, concerns or individuals as may be employed by the committee.

Sixth. When each respective bank creditor is fully paid all surplus or remaining collateral shall by such bank creditor be lodged with the Chicago Title and Trust Company as collateral security for the pro rata payment of all indebtedness of such bank creditors signing this agreement, whose claims remain unpaid, and the Chicago Title and Trust Company is given all the powers, rights and privileges with respect to such collateral as are contained in any note or pledge agreement of the company in the hands of any unpaid bank creditor. After the payment in full of all indebtedness owing by the company to bank creditors any remaining collateral lodged with the Chicago Title and Trust Company shall be returned to the company.

Seventh. The committee as at any time constituted and notwithstanding any vacancy, shall have all the powers and rights of the committee as originally formed. Any member of the committee may resign and in case of such [fol. 291] resignation or in case of a vacancy occurring through death, disability, or otherwise, the vacancy shall be filled by the financial institution of which such member was an officer at the time he became a member of the committee and in default of such appointment within five days after written notice from the committee, even though there be at that time only one remaining, the committee may

fill the vacancy or vacancies so existing. The committee as at any time constituted, though composed of only one member or notwithstanding any vacancy, shall have all the powers and rights of the committee as originally formed. The committee may act by any three of its members either at a meeting, or in writing or by telegram without a meeting, and if there are less than three members of the committee as at any time constituted, then by a majority thereof. Any member may vote or act by proxy, who may, but need not be another member of the committee. The committee may from time to time add to its number by electing by votes of all the members as from time to time constituted an additional member or members and the member or members so elected shall have all the powers of and together with those herein named, or their successors, and shall constitute the committee under this agreement with like force and effect as if they were herein specifically named.

Eighth. Neither the committee, nor any of its members shall be personally liable for any service, act and/or omission of any agent, servant, attorney, solicitor, firm, concern or individual employed in good faith, nor for any error of judgment or mistake of law, or for anything other [fol. 292] than wilful malfeasance. No member of the committee shall be liable for any act or omission of any other member of the committee or for anything other than his own malfeasance.

Ninth. The validity and performance of this contract and agreement, and also the terms and conditions thereof, are to be governed, interpreted and determined by and under the laws of Illinois.

Tenth. This agreement shall become effective when so declared by five members of the committee. Three members of the committee may declare this agreement terminated at any time and when so declared shall be terminated.

This agreement shall bind and benefit the several parties hereto, and each of their successors, heirs, executors, administrators and/or assigns.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

American Bond and Mortgage Company (Seal), by —— ——, Its President. (Seal.) Attest: —— ——, Its Secretary. (Seal.) —— ——, Chairman and Member of Committee. (Seal.) —— ——, Member of Committee. (Seal.) —— ——, Member of Committee. (Seal.) —— ——, Member [fol. 293] of Committee. (Seal.) —— ——, Member of Committee. (Seal.) —— ——, Member of Committee. (Seal.) —— ——, Name of Bank Creditor, (Seal), by —— ——, Its Vice-President. (Seal.) Attest: —— ——, Its Assistant Cashier. (Seal.)

[fol. 294] EXHIBIT "M" TO PETITION

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 47250

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Alleged Bankrupt

Petition for Adjudication

Your petitioners, Bellamy-Neff Company, a corporation, of Chicago, Illinois, Jackson Towers Building Corporation, a corporation, of Chicago, Illinois, Walker G. Everett, of Chicago, Ililnois, and R. W. Kenyon, of Chicago, Illinois, respectfully represent that the American Bond and Mortgage Company is a corporation organized and existing under and by virtue of the laws of the State of Maine, with its principal place of business in Chicago, Cook County, Illinois, at 127 North Dearborn Street. Your petitioners represent that the said alleged bankrupt has for the greater part of six months next preceding the filing of this petition had its principal place of business in Chicago, Illinois,

as above set forth, and that it owes debts in excess of One Thousand Dollars ($1,000.00) and that it is not a municipal, railroad, insurance, or banking corporation, and that it is not a wage earner or a person engaged chiefly in farming [fol. 295] or the tillage of the soil.

Your petitioners further represent that they are creditors of said American Bond and Mortgage Company, a corporation, the alleged bankrupt, having provable debts in excess of all securities by them held aggregating the sum of Five Hundred Dollars ($500.00) representing moneys loaned to said alleged bankrupt or for services or goods, wares and merchandise furnished and sold to said alleged bankrupt as follows:

Bellamy-Neff Company	$329.00
Jackson Towers Building Corp	133.54
Walter G. Everett	500.00
R. W. Kenyon	1,000.00

Your petitioners further represent that the said American Bond and Mortgage Company, a corporation, is insolvent and owes debts greatly in excess of the value of its assets, and that it has committed acts of bankruptcy in that it did within four (4) months next preceding the filing of this petition, to-wit, on the 26th day of February, 1931, transfer, while insolvent, to H. D. Watts Company, a creditor, a portion of its assets consisting of a sum in excess of Three Hundred Sixty-two Thousand Dollars ($362,000.00) to apply on judgment of said creditor in Supreme Judicial Court of Massachusetts, thereby preferring said creditor over its other creditors, and that it did, within four (4) months next preceding the filing of this petition, to-wit, on the 1st day of May, 1931, while insolvent, transfer to the First National Bank of Davenport, Iowa, a creditor, a portion of its assets consisting of the sum of Two Thousand [fol. 296] Five Hundred Dollars ($2,500.00), thereby preferring said creditor over its other creditors, and that it did, within four (4) months next preceding the filing of this petition, and while insolvent, transfer to certain of its creditors other portions of its assets consisting of money or securities, with the intent to prefer said creditors over its other creditors, and your petitioners ask leave to insert herein the names of said other creditors and the description

of the amounts paid to said creditors when ascertained, and that it did also within four (4) months next preceding the filing of the petition, and while insolvent, commit other and further acts of bankruptcy within the definition of Section 3, Chapter 3, sub-paragraph (a) of the Act of Congress in relation to bankruptcy and the amendments thereto, and your petitioners ask leave to specifically designate said acts of bankruptcy when more definitely ascertained.

Wherefore your petitioners pray that service of this petition with a subpœna may be made upon the said American Bond and Mortgage Company, a corporation, and that it may be adjudicated a bankrupt within the purview of the Acts of Congress in relation thereto, and your petitioners will ever pray.

Bellamy-Neff Company, Jackson Towers Building Corporation, Walker G. Everett, R. W. Kenyon, by Harold F. White, Agent and Attorney.

[fols. 297 & 298] STATE OF ILLINOIS,
County of Cook, ss:

Harold F. White, being first duly sworn, deposes and says that he is one of the attorneys for the petitioners herein and their agent for the purpose of signing this petition, and that he has been duly authorized to sign this petition on behalf of said petitioners, and that the matters and things herein set forth are true to the best of his knowledge and belief.

Harold F. White.

Subscribed and sworn to before me this 21st day of May, A. D. 1931. (Signed) A. M. Sandley, Notary Public.

Filed May 21, 1931, 5:00 P. M. Chas. M. Bates, Clerk. Attorneys: White & Hawxhurst, 1 N. LaSalle St., Chicago, Ill. Subpœna issued returnable May 28, 1931.

[fol. 299] In United States District Court for the Northern District of Illinois, Eastern Division

In Bankruptcy. No. 48011

In the Matter of American Bond and Mortgage Company, a Corporation, Bankrupt

Answer of American Bond and Mortgage Company, Bankrupt, to the Petition of Royal Indemnity Company, Petitioner—Filed Dec. 8, 1931

1. Your respondent, now and at all times hereinafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said petition contained, for answer thereunto or to so much and such parts thereof as your respondent is advised it is or are material or necessary for it to make answer unto, answering says, etc.

2. Your respondent neither admits nor denies that the Royal Indemnity Company is a corporation duly organized and created under the laws of the State of New York, and neither admits nor denies that the Royal Indemnity Company is duly authorized and empowered to transact business in the State of Illinois, but prays that the petitioner be required to make strict proof thereof.

3. Your respondent, for further answer, neither admits nor denies that the Royal Indemnity Company has a provable claim or debt in an amount exceeding $20,000.00 in excess of the value of any and all security which said Petitioner, Royal Indemnity Company, may hold, as alleged [fol. 300] in said petition, but prays that said petitioner be required to make strict proof thereof.

4. Your respondent, for further answer, admits that prior to February 16, 1926, it was engaged in the business of marketing mortgage securities on real property, and neither admits nor denies that it entered into the contract with the Royal Indemnity Company as set forth in said Petition, but prays that said petitioner be required to make strict proof thereof.

5. Your respondent, for further answer, neither admits nor denies that the Royal Indemnity elected to, and did, issue its bonds of guarantee, or that the substance of said bonds guaranteed the payment of the principal and interest of certain mortgage securities alleged to have been marketed by the respondent or that the bonds so marketed and still outstanding aggregate $540,700.00, but prays that the petitioner be required to make strict proof thereof.

6. Your respondent, for further answer, neither admits nor denies that it has purchased and now holds bonds totalling $25,000.00, which it is alleged the said Royal Indemnity Company has guaranteed, but prays that the petitioner be required to make strict proof thereof.

7. Your petitioner, for further answer, neither admits nor denies that the document annexed to said petition and marked "Exhibit A" is a copy of the alleged agreement of February 16, 1926, or that the same was executed for and on behalf of the American Bond and Mortgage Company, but prays that the petitioner may be required to make strict proof thereof.

8. Your respondent, for further answer, neither admits nor denies that the document annexed to said petition and marked "Exhibit B" is a copy of the form of bond in use, but prays that the petitioner be required to make strict proof thereof.

[fol. 301] 9. Your respondent, for further answer, neither admits nor denies that the document annexed to said petition and marked "Exhibit C" is a list of the bonds alleged to have been guaranteed by the Royal Indemnity Company or that said bonds are still outstanding, but prays that the petitioner be required to make strict proof thereof.

10. Your respondent, for further answer, neither admits nor denies that it delivered to the Royal Indemnity Company certain negotiable securities or that said negotiable securities were of a market value of 5% of the aggregate par face value of all of the mortgage securities so alleged to be guaranteed by the Royal Indemnity Company, but prays that the petitioner be required to make strict proof thereof.

11. Your respondent, for further answer, neither admits nor denies that the market value of any securities so al-

leged to have been deposited by your respondent with the petitioner has depreciated or that the alleged fund has also become depleted as alleged in said petition, and neither admits nor denies the payment by the Royal Indemnity Company of any alleged losses under the bonds so alleged to have been issued by it, and neither admits nor denies that the market value of the securities now on deposit and cash on hand with the Royal Indemnity Company is not over $4,000.00 and is not equal to the aforesaid percentage of 5% of the aggregate par or face value of all of the mortgage securities alleged to have been guaranteed by the Royal Indemnity Company which are still outstanding in the hands of third parties, but prays that the petitioner be required to make strict proof thereof.

12. Your respondent, for further answer, denies that there is any shortage in such alleged deposit by virtue of any alleged depreciation in such alleged securities.

[fol. 302] 13. Your respondent, for further answer, neither admits nor denies that the depreciation in such alleged securities or deposit exceeded $23,000.00 on, to-wit, the 25th day of May, A. D. 1931, or that such alleged depreciation was by reason of any payment therefrom by said petitioner or that the Royal Indemnity Company was required to or did pay any interest on any alleged defaulted issues, or that there are any defaulted issues for which reimbursement has not been made by the said Royal Indemnity Company, but prays that the petitioner be required to make strict proof thereof.

14. Your respondent, for further answer, neither admits nor denies that on, to-wit, April 5, 1930, April 9, 1930, and May 5, 1930, the Royal Indemnity Company duly demanded from this respondent that it deliver further securities or cash; but prays that the petitioner be required to make strict proof thereof; and for further answer denies that any obligation existed on its part to deliver to the Royal Indemnity Company any securities or cash whatsoever by reason of the alleged agreement of February 16, 1926, or by reason of any alleged guarantee of the Royal Indemnity Company on mortgages securities sold or issued by this respondent.

15. Your respondent, for further answer, neither admits nor denies that there is now due, owing and unpaid from it

to the Royal Indemnity Company a sum in excess of $23,000.00, or that the bonds so alleged to have been guaranteed aggregate $540,700.00, but prays that the petitioner be required to make strict proof thereof.

16. Your respondent, for further answer, denies that the Royal Indemnity Company has fully performed all of the terms and conditions of the said alleged agreement of February 16, 1926, on its part to be performed, and for further answer neither admits nor denies that your respondent has [fol. 303] refused and still refuses to comply with the alleged demand of the Royal Indemnity Company that your respondent deliver further securities or cash, or that your respondent has failed to carry out the provisions of said alleged agreement on its part to be performed, but prays that the petitioner be required to make strict proof thereof.

17. Your respondent, for further answer, neither admits nor denies that it is indebted to the Royal Indemnity Company on various other claims in far larger sums by reason of any other facts whatsoever, but prays that the petitioner be required to make strict proof thereof.

18. Your respondent, for further answer, denies that it was not, on September 5, 1931, a person qualified to file a voluntary petition in bankruptcy in the Northern District of Illinois, Eastern Division, within the meaning of Section 59-a of the United States Bankruptcy Act, but states the fact to be that on, to wit, September 5, 1931, and since the date of its incorporation, it was a qualified person within the meaning of Section 22-a of the United States Bankruptcy Act, with its principal place of business in the Northern District of Illinois, Eastern Division, for the preceding six months prior to the filing of its said voluntary petition in bankruptcy, and that it was not a municipal, railroad, insurance or banking corporation.

19. Your respondent, for further answer, admits that it is a corporation duly organized under and by virtue of the laws of the State of Maine, and that its domicile is and has always been, since its incorporation, the State of Maine.

20. Your respondent, for further answer, denies that it did not have its principal place of business within the Northern District of Illinois for the greater portion of six

months next preceding the date of the filing of said voluntary petition in bankruptcy herein, and denies that it did [fol. 304] not have any place of business in the Northern District of Illinois or do any business in said District for more than three months and ten days immediately preceding the date of the filing of the petition in bankruptcy herein, but states the fact to be that its principal place of business for the six months next preceding the date of the filing of said voluntary petition in bankruptcy herein was in the City of Chicago and in the Northern District of Illinois, and that it was transacting business in said District for more than three months and ten days immediately next preceding the date of the filing of the petition in bankruptcy herein.

21. Your respondent, for further answer, admits that on the 21st day of May, A. D. 1931, T. H. Clarke and others, as complainants, filed their bill of complaint against this respondent in the District Court of the United States for the Northern District of Illinois, Eastern Division, but neither admits nor denies that the document annexed to said petition and marked "Exhibit D" is a true copy of said bill in equity, but prays, that the petitioner be required to make strict proof thereof.

22. Your respondent, for further answer, admits that on the 22nd day of May, A. D. 1931, it voluntarily appeared in said alleged equity proceedings without service of any process on it and that it filed its answer in said alleged equity proceedings, and that it consented to the appointment of a Receiver of its property and assets, but neither admits nor denies that the alleged copy of such answer annexed to said petition and marked "Exhibit E" is a true copy of such answer, but prays that the petitioner be required to make strict proof thereof.

23. Your respondent, for further answer, admits that on the 22nd day of May, A. D. 1931, decrees were entered in said equity proceedings upon such alleged bill and [fol. 305] answer, but neither admits nor denies that "Exhibits F and G" annexed to said petition are true and correct copies of said alleged decrees, but prays that strict proof be made thereof; and for further answer admits that, pursuant thereto, on the 22nd day of May, A. D. 1931, the alleged Co-Receivers alleged to have been appointed by

such decrees, duly qualified as such and immediately entered into possession of all the assets of your respondent in the Northern District of Illinois, and that said Receivers took possession of its offices and books and papers, and that said Receivers have had possession, control of, and have administered and are in possession of and are administering the property, business and assets of this respondent.

24. Your respondent, for further answer, neither admits nor denies that it has at no time since the 22nd day of May, A. D. 1931, had any custody or possession or administration of its property and assets in the Northern District of Illinois, or that it has not transacted business in the Northern District of Illinois and has had no offices therein and has not had its principal place of business therein, but prays that the petitioner be required to make strict proof thereof.

25. Your respondent, for further answer, denies that since the 22nd day of May, A. D. 1931, said Co-Receivers have been engaged in liquidating the property and assets of your respondent, and have not been buying any property or assets and have not been selling any of the property or assets of your respondent except by way of liquidation thereof.

26. Your respondent, for further answer, neither admits nor denies that the stockholders nor any meeting or meetings of stockholders of this respondent, authorized the filing of said voluntary petition in bankruptcy, and neither admits nor denies that no legal meeting of its stockholders [fol. 306] has been called or held for that purpose, and neither admits nor denies that under the laws of Maine only the stockholders in a meeting duly called could authorize the filing of a voluntary petition in bankruptcy, and neither admits nor denies that the directors of a Maine corporation have no power, express or implied, to authorize the filing of a voluntary petition in bankruptcy, but prays that the petitioner be required to make strict proof thereof.

27. Your respondent, for further answer, neither admits nor denies that it has not had either its residence or its domicile within the Northern District of Illinois for any

part of the six months immediately preceding the date of the filing of said petition in bankruptcy herein, or that during all of said time it has been domiciled and has resided in the State of Maine, but prays that the petitioner be required to make strict proof thereof.

28. Your respondent, for further answer, admits that on, to-wit, the 19th day of February, A. D. 1931, it made its annual sworn report to the Secretary of State of Illinois; and for further answer states that on, to-wit—July 26th, A. D. 1931, it filed its supplemental annual sworn report for the year 1930 with the Secretary of the State of Illinois, stating therein that it had property in the State of Illinois the value of which was $13,471,346.70.

29. Your respondent, for further answer, states the fact to be that it was actively engaged in the transaction of business in the State of Illinois within the Northern District of said State during the years 1930 and 1931, and that it had property and assets located in the State of Illinois and within the judicial District of the Northern District of Illinois in excess of the book value of $13,000,000.00.

30. Your respondent, further answering, denies that prior to the year 1930 the principal place of business of [fol. 307] your respondent had long been in the City of New York, State of New York, but states the fact to be that since the date of its incorporation and during the years 1930 and 1931 it had its principal place of business within the City of Chicago, State of Illinois, and within the United States Judicial District for the Northern District of Illinois.

31. Your respondent, for further answer, denies that the only business done in the Northern District of Illinois in connection with the affairs of this respondent between January 1, 1931, and May 21, 1931, were acts of liquidation of its assets and payment on its debts, and denies that your respondent did no other or different business in the State of Illinois between January 1, 1931, and May 21, 1931, than it had done in the year 1930, and denies that in the years 1930 and 1931 the business done in Illinois was simply liquidation or was done by the said Chicago Title & Trust Company, but states the fact to be that, during the year 1930, your respondent actually transacted business in its own name and was operating under its corporate franchise, was

operating its wholly owned subsidiaries and affiliated companies, and was actively engaged in the realization of its equities in real estate, and that its relations with the Chicago Title & Trust Company during the year 1930 was merely that of representative of stockholders and corporation up to July 30, 1930, and that after August 1, 1930, until May 21, 1931, the said Chicago Title & Trust Company had no equity or interest in your respondent or control over its affairs nor was it transacting any business for or on behalf of your respondent.

32. Your respondent, for further answer, denies that this court had no jurisdiction to adjudge your respondent a bankrupt upon its voluntary petition in bankruptcy.

33. Your respondent, for further answer, admits that on the 21st day of May, A.D. 1931, an involuntary petition in bankruptcy was filed against it in this Judicial District, and [fol. 308] admits that on the 25th day of May, A. D. 1931, an involuntary petition in bankruptcy was filed against it in the District Court of the United States for the District of Maine, and neither admits nor denies that the copies of said petition in the District Court of Maine and the alleged answer of your respondent thereto marked "Exhibits H and I" and annexed to said petition, are true and correct copies of said petition and answer, but prays that the petitioner be required to make strict proof thereof.

34. Your respondent, for further answer, admits that on the 3rd of September, A. D. 1931, this respondent by its attorneys withdrew its said answer, but neither admits nor denies that the document annexed to said petition marked "Exhibit I-1" is a true and correct copy thereof, but prays that the petitioner be required to make strict proof thereof.

35. Your respondent, for further answer, admits that on the 5th day of September, A. D. 1931, on the motion to stay the proceedings of the involuntary petition so filed in this Court, this Court entered the order as alleged in said petition.

36. Your respondent, for further answer, neither admits nor denies that it filed its certain petition in said District Court of the United States for the District of Maine for the transfer of the bankruptcy proceedings therein pending, or

that the document marked "Exhibit J" annexed to said petition is a true and correct copy thereof, or that the document marked "Exhibit K" annexed to said petition is a true copy of the alleged answer filed by the petitioning creditors in said proceedings in Maine, but prays that the petitioner be required to make strict proof thereof.

37. Your respondent, for further answer, admits that no notice of the filing of said voluntary petition in bankruptcy in this court was given to the petitioners in the said in- [fol. 309] voluntary bankruptcy proceedings in Maine, but denies that the entry of the order of adjudication in bankruptcy upon said voluntary petition by reason of said alleged failure to notify said parties was improper.

38. Your respondent, for further answer, neither admits nor denies that the voluntary petition in bankruptcy herein was filed after the entry of the order staying the involuntary proceedings pending in this Court, but prays that the petitioner be required to make strict proof thereof.

39. Your respondent, for further answer, denies that it is of great moment to the estate that adjudication be had on the said involuntary petition in bankruptcy so filed in the District Court of the United States for the District of Maine on May 25, 1931, rather than on the voluntary petition filed in this District on September 5, 1931, but states the fact to be that under the practice of this Court the voluntary petition filed herein on September 5, 1931, will be consolidated with the involuntary proceedings in bankruptcy filed in this Court on May 21, 1931, so that any alleged preferences, payments or transfers, which could be set aside in the proceedings in Maine, could be set aside under the proceedings in this jurisdiction, so that no prejudice to the rights of the petitioner or to the bankrupt estate would be effected by permitting the adjudication entered in these proceedings to stand.

40. Your respondent, for further answer, neither admits nor denies that the involuntary petition filed in this Court on May 21, 1931, alleges as an act of bankruptcy a payment to H. D. Watts Company on February 26, 1931, of a sum in excess of $362,000.00 and the payment of $2,500.00 to the First National Bank of Davenport, Iowa, on May 1st, 1931, but prays that the petitioner be required to make strict proof thereof.

[fol. 310] 41. Your respondent, for further answer, denies that the alleged payment by it to H. D. Watts Company of $44,000.00 constituted a voidable preference, but states the fact to be that on, to wit, the 25th day of February, A. D. 1931, and that on, to wit, January 25, 1931, and May 5, 1931, your respondent was solvent, in that the fair value of its assets as a going concern exceeded its liabilities.

42. Your respondent, for further answer, neither admits nor denies that payments were made by it to the several banks on account of claims held by them, as alleged in said petition, but prays that the petitioner be required to make strict proof thereof.

43. Your respondent, for further answer, denies that, during the period between January 25, 1931, and May 5, 1931, your respondent was insolvent and that any of the alleged payments were made with intent to effect a preference over any other creditors of the same class, but states the fact to be that during such period between January 25, 1931, and May 5, 1931, your respondent was solvent in that its assets, at a fair valuation as a going concern exceeded its liabilities and that any payments so made during said period to said banks were made to all creditors of the same class and were made out of moneys received by your respondent on the securities which were held by said banks.

44. Your respondent, for further answer, neither admits nor denies that on the 9th day of March, A. D. 1931, 1st day of April, A. D. 1931, and the 13th day of April, A. D. 1931, it paid to the Merchants National Bank of Poughkeepsie the sum of $106.17, as alleged in said petition, and neither admits nor denies that said bank held securities for said note not exceeding $15,000.00 in value, but prays that the petitioner be required to make strict proof thereof.

45. Your respondent, for further answer, denies that said alleged three payments of $106.17 were made by it while it was insolvent, with intent to prefer said Merchants National [fol. 311] Bank of Poughkeepsie over its other creditors of the same class, but states the fact to be that during the period between the 25th day of January, A. D. 1931, and the 5th day of May, A. D. 1931, your respondent was solvent in that its assets, at a fair valuation as a going concern, exceeded its liabilities.

46. Your respondent, for further answer, denies that during such period from January 25, 1931, to May 5, 1931, your respondent, while insolvent, made numerous other large payments to various other creditors and other persons to whom it was seeking to prefer.

47. Your respondent, for further answer, denies that between January 25, 1931, and May 5, 1931, it made other large payments running into hundreds of thousands of dollars to various creditors or to anyone whatsoever in connection with the Whitehall property in Florida.

48. Your respondent, for further answer, denies that any payments of whatsoever amount were in the main made by direction of the Chicago Title & Trust Company, or that the Chicago Title & Trust Company had any connection or interest or management over the affairs of your respondent during said period from January 25, 1931, to May 5, 1931.

49. Your respondent, for further answer, denies that any payments whatsoever were made to any persons, corporations or banks whatsoever while it was, in fact, insolvent, or that any preferential transfers whatsoever were made either in connection with the so-called Whitehall property or in connection with any other matter.

50. Your respondent, for further answer, neither admits nor denies that such preferential payments and transfers so alleged to have been made between January 25, 1931, and May 5, 1931, would be recoverable if adjudication be granted on the involuntary petition filed in the District Court of Maine, or that said preferential payments could not be recovered if the adjudication in bankruptcy stands [fol. 312] on the voluntary petition filed herein on September 5, 1931, but prays that the petitioner be required to make strict proof thereof.

51. Your respondent, for further answer, denies that the adjudication upon the voluntary petition filed on September 5, 1931, would date only from that date and would also tend to validate the acts of said Equity Receivers, as alleged in said petition, and denies that the payment by the Equity Receivers to Crosby & Murphy of $5,207.06 was

payment of an antecedent claim, but states the fact to be that the date of adjudication upon the voluntary petition filed herein would, upon consolidation with the involuntary petition filed on May 21, 1931, and which is now pending before this Honorable Court, relate back to the date of the filing of the first involuntary petition which was filed in this District, so that any voidable preferences or transfers made between January 25, 1931, and May 5, 1931, could be set aside upon proper proceedings, and further states the fact to be the payment by the Equity Receivers to Crosby & Murphy of $5,027.06 is not a payment of an antecedent claim but was a purchase by said Receivers under the order of the Equity Court of an audit which was beneficial to this estate.

52. Your respondent, for further answer, admits that the adjudication on said voluntary petition in bankruptcy was made without notice to said petitioner, but denies that said adjudication was in fraud of the order of this court or was in fraud of the jurisdiction required by the District Court of the United States for the District of Maine and/or to the rights of said petitioner or the other petitioners in said involuntary bankruptcy proceedings so instituted in the District of Maine.

53. Your respondent, for further answer, denies that the filing of the voluntary petition is one of a long series of steps taken by or on behalf of the stockholders of over [fol. 313] 85% of the common stock of this respondent, or namely, William J. Moore, Hattie K. Moore, Kenneth W. Moore, C. C. Moore, C. B. Moore, and Harold A. Moore, or that said voluntary petition was filed to control the liquidation of the affairs of your respondent or to prevent or hamper investigation of the alleged misconduct and alleged frauds of the said Moores or to prevent any interested party or parties from obtaining adequate redress therefore, to evade the recovery of alleged preferential payments and transfers, but states the fact to be that the said voluntary petition was filed in good faith on the part of your respondent for the purpose of bringing to an end the long and costly litigation with respect to its affairs and to provide a speedy administration in accordance with the provisions of the Bankruptcy Act in this jurisdiction where

the affairs of this respondent could be liquidated for the greatest convenience and best interest of all of the creditors of this estate, and that the said Moores had no control over the action of your respondent in the institution of the said bankruptcy proceedings whatsoever.

54. Your respondent, for further answer, admits that an agreement was entered into as of September 10, 1929, between your respondent and a large number of the banks which were creditors of your respondent, but denies that the execution of said agreement was for the unlawful purposes set forth in said petition, but states the fact to be that said agreement, and the appointment of said Creditors' Committee, was for the purpose of conserving the property and assets of your respondent and was for the best interests of not only your respondent but all of the creditors and stockholders of your respondent.

55. Your respondent, for further answer, admits that on September 10, 1929, a further agreement was then made by the said Moores and other stockholders with the Chicago Title & Trust Company, but denies that the Chicago Title & Trust Company then took over the management of [fol. 314] the affairs of your respondent as agent, and states the fact to be that the Chicago Title & Trust Company merely acted as voting trustee of the common stock of your respondent, and that the officers or agents of the Chicago Title and Trust Company who participated in any of the affairs of your respondent were acting in their individual capacity and not as officers or agents of the Chicago Title & Trust Company, but were acting as agents of your respondent, and that any and all business transacted in Illinois or elsewhere was, in fact, transacted by your respondent in pursuance to its corporate franchise; that on, to wit, July 30, 1930, the said Chicago Title & Trust Company resigned under said agreement as of said date, and that from August 1, 1930 to and including May 22nd, 1931, had no connection with your respondent or any voice in its affairs, except as a depositary for the holders of the debenture bonds, preferred and common stock of your respondent, and that said Chicago Title & Trust Company did not participate in the making of any payments alleged to have been made by your respondent during the

period between January 25, 1931, and May 5, 1931, as alleged in said petition.

56. Your respondent, for further answer, neither admits nor denies that the Chicago Title & Trust Company, under the said agreement of September 10, 1929, became interested as a representative of such banks as signed such agreement, or that said banks have received any preferential payments from your respondent between January 25, 1931, to May 5, 1931, but prays that the petitioner be required to make strict proof thereof.

57. Your respondent, for further answer, denies that important officers and stockholders of the Chicago Title & Trust Company were closely affiliated with the said Moores and friendly to them.

58. Your respondent, for further answer, admits that the Chicago Title & Trust Company was one of the depositaries of the Committee of the holders of debenture bonds of your respondent, the other depositary being the Title Guaranty & Trust Co. of New York.

[fol. 315]

59. Your respondent, for further answer, admits that the Chicago Title & Trust Company was one of the depositaries of a committee for the protection of the holders of the preferred stock of your respondent, but denies that said committee was self-appointed, and denies that the membership of said committee was instigated and brought about by the selection of the said Moores, and admits that the Moores, on or about the 15th day of July, 1930, transferred their stock in your respondent to voting trustees, and denies that the voting trustees were the nominees of the said Moores, but states the fact to be that on, to wit, July 15, 1930, the committees of the debenture bonds and the preferred stock each selected two voting trustees, and the four voting trustees selected Holman D. Pettibone as the fifth voting trustee; that the two voting trustees representing the debenture bonds are Newton C. Farr, who was at that time President of the Chicago Real Estate Board, and Arthur F. Davies, who was at that time Trust Officer of the City Bank Farmers Trust Company of New York; that the two voting trustees selected by the preferred stockholders are Hiram Cody of the Cody Trust Company, Chicago, and Stuart H. Otis, of

the Central Trust Company of Illinois, and that said voting trustees had no connection with the said Moores whatsoever.

60. Your respondent, for further answer, denies that the said Moores procured the filing of the said bill in equity and the consent and answer thereto, and denies that the said Moores had any connection with the said equity proceedings whatsoever.

61. Your respondent, for further answer, denies that the Chicago Title & Trust Company, your respondent, or the complainants in said equity bill, caused the filing of said involuntary petition in bankruptcy files in this Court, and denies that said involuntary petition in bankruptcy was [fol. 316] filed by persons friendly to the said Moores, or that the same was filed as a protective measure to ward off other bankruptcy proceedings until more than four months after the appointment and qualification of said Equity Receivers, and with no intention of prosecuting the same.

62. Your respondent, for further answer, denies that the said voluntary petition in bankruptcy filed herein was filed to prevent the entry of an order of adjudication in the District Court of Maine or to prevent inquiry into the transactions of your respondent, its officers and stockholders, or to prevent the invalidation of said alleged preferential payments.

Your respondent now having fully answered said petition, prays that said petition be dismissed upon the following grounds:

(1) Your respondent had the right to file its said voluntary petition in bankruptcy and to be adjudged a bankrupt thereon.

(2) Your respondent did, in fact, have its principal place of business in this District for the greater portion of six months next preceding the date of the filing of said petition.

(3) The petition fails to show that the Royal Indemnity Company has a provable claim within the meaning of the United States Bankruptcy Act.

(4) The petitioner has no standing to maintain its action to set aside the adjudication entered in this cause or to

question the authority of the Board of Directors of your respondent to authorize the filing of said voluntary petition in bankruptcy.

(5) That upon a consolidation of the voluntary petition and the involuntary petition filed in this District, all voidable preferences may be set aside by proper proceedings.

(6) Said petition contains scandalous and impertinent [fols. 317 & 318] matters which have no bearing or connection with the relief sought by the said petition.

American Bond and Mortgage Company, by (signed) Arthur W. Draper, President. (Signed) A. L. Schapiro, H. E. Ambler, Solicitors for American Bond and Mortgage Company.

Duly sworn to by Arthur W. Draper. Jurat omitted in printing.

[fol. 319] In United States District Court

[Title Omitted]

Amended Answer of American Bond and Mortgage Company, Bankrupt, to the Petition of Royal Indemnity Company, Petitioner—Filed Feb. 2, 1932.

1. Your respondent, now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said petition contained, for answer thereunto or to so much and such parts thereof as your respondent is advised it is or are material or necessary for it to make answer unto, answering says, etc.

2. Your respondent admits that the Royal Indemnity Company is a corporation duly organized and created under the laws of the State of New York, and is duly authorized and empowered to transact business in the State of Illinois.

3. Your respondent, for further answer, denies that the Royal Indemnity Company has a provable claim or debt in an amount exceeding $20,000.00 in excess of the value

of any and all security which said petitioner, Royal Indemnity Company, may hold, as alleged in said petition.

4. Your respondent, for further answer, admits that prior to February 16, 1926, it was engaged in the business of marketing mortgage securities on real property and admits that it entered into the contract with the Royal Indemnity Company as set forth in said petition.

[fol. 320] 5. Your respondent, for further answer, admits that the Royal Indemnity elected to, and did, issue its bonds of guarantee, and that the substance of said bonds guaranteed the payment of the principal and interest of certain mortgage securities alleged to have been marketed by the respondent and for further answer says that it is without knowledge that the bonds so marketed and still outstanding aggregate $540,700.00 and, therefore, prays that the petitioner be required to make strict proof thereof.

6. Your respondent, for further answer, is without knowledge and, therefore, neither admits nor denies that it has purchased and now holds bonds totaling $25,000.00, which it is alleged the said Royal Indemnity Company has guaranteed, but prays that the petitioner be required to make strict proof thereof.

7. Your respondent, for further answer, admits that the document annexed to said petition and marked "Exhibit B" is a copy of the form of bond in use.

8. Your respondent, for further answer, says that it is without knowledge and, therefore, neither admits nor denies that the document annexed to said petition and marked "Exhibit C" is a list of the bonds alleged to have been guaranteed by the Royal Indemnity Company or that said bonds are still outstanding, but prays that the petitioner be required to make strict proof thereof.

9. Your respondent, for further answer, admits that it delivered to the Royal Indemnity Company certain negotiable securities and that said negotiable securities were of a market value of 5% or more of the aggregate par face value of all of the mortgage securities so alleged to be guaranteed by the Royal Indemnity Company.

10. Your respondent, for further answer, denies that the market value of any securities so alleged to have been de-

posited by your respondent with the petitioner has greatly depreciated and for further answer says it is without [fol. 321] knowledge as to whether the alleged fund has become depleted as alleged in said petition, and as to whether payment has been made by the Royal Indemnity Company of any alleged losses under the bonds so alleged to have been issued by it, and as to whether the market value of the securities now on deposit and cash on hand with the Royal Indemnity Company is not over $4,000.00 and is not equal to the aforesaid percentage of 5% of the aggregate par or face value of all of the mortgage securities alleged to have been guaranteed by the Royal Indemnity Company which are still outstanding in the hands of third parties, and therefore prays that the petitioner be required to make strict proof thereof.

11. Your respondent, for further answer, denies that there is any shortage in such alleged deposit by virtue of any alleged depreciation in such alleged securities.

12. Your respondent, for further answer, says that it is without knowledge and, therefore, neither admits nor denies that the depreciation in such alleged securities or deposit exceeded $23,000.00 on, to-wit: the 25th day of May, A. D. 1931, or that such alleged depreciation was by reason of any payment therefrom by said petitioner, or that the Royal Indemnity Company was required to or did pay any interest on any alleged defaulted issues, or that there are any defaulted issues for which reimbursement has not been made by the said Royal Indemnity Company, but prays that the petitioner be required to make strict proof thereof.

13. Your respondent, for further answer, admits that on, to-wit: April 5, 1930, April 9, 1930, and May 5, 1930, the Royal Indemnity Company duly demanded from this respondent that it deliver further securities or cash.

14. Your respondent, for further answer, denies that there is now due, owing and unpaid from it to the Royal Indemnity Company a sum in excess of $23,000.00.

15. Your respondent, for further answer, denies that the Royal Indemnity Company has fully performed all of the [fol. 322] terms and conditions of the said alleged agreement of February 16, 1926, on its part to be performed,

and for further answer admits that your respondent has refused and still refuses to comply with the alleged demand of the Royal Indemnity Company that your respondent deliver further securities or cash.

16. Your respondent, for further answer, denies that it is indebted to the Royal Indemnity Company on various other claims in far larger sums by reason of any other facts whatsoever.

17. Your respondent, for further answer, denies that it was not, on September 5, 1931, a person qualified to file a voluntary petition in bankruptcy in the Northern District of Illinois, Eastern Division, within the meaning of Section 59-a of the United States Bankruptcy Act, but states the fact to be that on, to-wit: September 5, 1931, and since the date of its incorporation, it was a qualified person within the meaning of Section 22-a of the United States Bankruptcy Act, with its principal place of business in the Northern District of Illinois, Eastern Division, for the preceding six months prior to the filing of its said voluntary petition in bankruptcy, and that it was not a municipal, railroad, insurance or banking corporation.

18. Your respondent, for further answer, admits that it is a corporation duly organized under and by virtue of the laws of the State of Maine, and that its domicile is and has always been, since its incorporation, the State of Maine.

19. Your respondent, for further answer, denies that it did not have its principal place of business within the Northern District of Illinois for the greater portion of six months next preceding the date of the filing of said voluntary petition in bankruptcy herein, and denies that it did not have any place of business in the Northern District of Illinois or do any business in said District for more than three months and ten days immediately preceding the date of the filing of [fol. 323] the petition in bankruptcy herein.

20. Your respondent, for further answer, admits that on the 21st day of May, A. D. 1931, T. H. Clarke and others, as complainants, filed their bill of complaint against this respondent in the District Court of the United States for the Northern District of Illinois, Eastern Division, and that the document annexed to said petition and marked "Exhibit D" is a true copy of said bill in equity.

21. Your respondent, for further answer, admits that on the 22nd day of May, A. D. 1931, it voluntarily appeared in said alleged equity proceedings without service of any process on it and that it filed its answer in said alleged equity proceedings, and that it consented to the appointment of a Receiver of its property and assets, and admits that the copy of such answer annexed to said petition and marked "Exhibit E" is a true copy of such answer.

22. Your respondent, for further answer, admits that on the 22nd day of May, A. D. 1931, decrees were entered in said equity proceedings upon said bill and answer as alleged in said petition, and for further answer admits that, pursuant thereto, on the 22nd day of May, A. D. 1931, co-receivers had been appointed by such decrees, duly qualified as such and immediately entered into possession of all the assets of your respondent in the Northern District of Illinois, and that said Receivers took possession of its offices and books and papers, and that said Receivers have had possession, control of, and have administered and are in possession of and are administering the property, business and assets of this respondent.

23. Your respondent, for further answer, admits that since the 22nd day of May, A. D. 1931, said co-receivers had custody and possession of its property and assets in the Northern District of Illinois but denies that it has not transacted business in the Northern District of Illinois and has [fol. 324] had no offices therein and has not had its principal place of business therein.

24. Your respondent, for further answer, denies that since the 22nd day of May, A. D. 1931, said co-receivers have been engaged in liquidating the property and assets of your respondent, and have not been buying any property or assets and have not been selling any of the property or assets of your respondent except by way of liquidation thereof.

25. Your respondent, for further answer admits that no meeting of its stockholders has been called or held for the purpose of authorizing said petition and denies that under the laws of Maine only the stockholders in a meeting duly called could authorize the filing of a voluntary petition in bankruptcy, and denies that the directors of a Maine cor-

poration have no power, to authorize the filing of a voluntary petition in bankruptcy, and further answering respondent shows to the Court that 93% of the outstanding common capital stock, which alone had voting power, then held by the voting trustees thereof duly authorized the filing of said petition, and further that said petitioner may not complain thereof.

26. Your respondent, for further answer, admits that on, to-wit: the 19th day of February, A. D. 1931, it made its annual sworn report to the Secretary of State of Illinois; and for further answer states that on to-wit: July 26th, A. D. 1931, it filed its supplemental annual sworn report for the year 1930 with the Secretary of the State of Illinois, stating therein that it had property in the State of Illinois the value of which was $13,471,246.70.

27. Your respondent, for further answer, states the fact to be that it was actively engaged in the transaction of business in the State of Illinois within the Northern District of said State during the years 1930 and 1931, and that it had [fol. 325] property and assets located in the State of Illinois and within the Judicial District of the Northern District of Illinois in excess of the book value of $13,000,000.00.

28. Your respondent, further answering, denies that prior to the year 1930 the principal place of business of your respondent had long been in the City of New York, State of New York, but states the fact to be that since the date of its incorporation and during the years 1930 and 1931 it had its principal place of business within the City of Chicago, State of Illinois, and within the United States Judicial District for the Northern District of Illinois.

29. Your respondent, for further answer, denies that the only business done in the Northern District of Illinois in connection with the affairs of this respondent between January 1, 1931, and May 21, 1931, were acts of liquidation of its assets and payment on its debts, and denies that your respondent did no other or different business in the state of Illinois between January 1, 1931 and May 21, 1931, than it had done in the year 1930, and denies that in the years 1930 and 1931 the business done in Illinois was simply liquidation or was done by the said Chicago Title & Trust Company, but states the fact to be that during the year 1930,

your respondent actually transacted business in its own name and was operating under its corporate franchise, was operating its wholly owned subsidiaries and affiliated companies, and was actively engaged in the reorganization of its equities in real estate.

30. Your respondent, for further answer, denies that this court had no jurisdiction to adjudge your respondent a bankrupt upon its voluntary petition in bankruptcy.

31. Your respondent, for further answer, admits that on the 21st day of May, A. D. 1931, an involuntary petition in [fol. 326] bankruptcy was filed against it in this Judicial District, and admits that on the 25th day of May, A. D. 1931, an involuntary petition in bankruptcy was filed against it in the District Court of the United States for the District of Maine, as alleged in said petition.

32. Your respondent, for further answer, admits that on the 3rd of September, A. D. 1931, this respondent by its attorneys withdrew its said answer as alleged in said petition.

33. Your respondent, for further answer, admits that on the 5th day of September, A. D. 1931, on the motion to stay the proceedings of the involuntary petition so filed in this Court, this Court entered the order as alleged in said petition.

34. Your respondent, for further answer admits that it filed its certain petition in said District Court of the United States for the District of Maine for the transfer of the bankruptcy proceedings therein pending, and that the document marked "Exhibit J" annexed to said petition is a true and correct copy thereof, and that the document marked "Exhibit K" annexed to said petition is a true copy of the alleged answer filed by the petitioning creditors in said proceedings in Maine.

35. Your respondent, for further answer, admits that no notice of the filing of said voluntary petition in bankruptcy in this Court was given to the petitioners in the said involuntary bankruptcy proceedings in Maine, but denies that the entry of the order of adjudication in bankruptcy upon said voluntary petition by reason of said alleged failure to notify said parties was improper.

36. Your respondent, for further answer, denies that the voluntary petition in bankruptcy herein was filed after the entry of the order staying the involuntary proceedings pending in this Court.

37. Your respondent, for further answer, denies that it is of great moment to the estate that adjudication be had [fol. 327] on the said involuntary petition in bankruptcy so filed in the District Court of the United States for the District of Maine on May 25, 1931, rather than on the voluntary petition filed in this District on September 5, 1931, but states the fact to be that under the practice of this Court, the voluntary petition filed herein on September 5, 1931, will be consolidated with the involuntary proceedings in bankruptcy filed in this Court on May 21, 1931, so that any alleged preferences, payments or transfers, which could be set aside in the proceedings in Maine, could be set aside under the proceedings in this jurisdiction, so that no prejudice to the rights of the petitioner or to the bankrupt estate would be effected by permitting the adjudication entered in these proceedings to stand.

38. Your respondent, for further answer, admits that the involuntary petition filed in this Court on May 21, 1931, alleges as an act of bankruptcy a payment to H. D. Watts Company on February 26, 1931, of a sum in excess of $362,000.00 and the payment of $2,500.00 to the First National Bank of Davenport, Iowa on May 1st, 1931.

39. Your respondent, for further answer, denies that the alleged payment by it to H. D. Watts Company of $44,000.00 constituted a voidable preference, but states the fact to be that on to-wit: the 25th day of February, A. D. 1931, and that on to-wit: January 25, 1931, and May 5, 1931, your respondent was solvent, in that the fair value of its assets as a going concern exceeded its liabilities.

40. Your respondent, for further answer, admits that some payments of interest were made by it to several banks on account of claims held by them, as alleged in said petition.

41. Your respondent, for further answer, denies that during the period between January 25, 1931 and May 5, 1931 your respondent was insolvent and that any of the alleged [fol. 328] payments were made with intent to effect a preference over any other creditors of the same class, but states

the fact to be that during such period between January 25, 1931, and May 5, 1931, your respondent was solvent in that its assets, at a fair valuation as a going concern exceeded its liabilities.

42. Your respondent, for further answer, admits that on the 9th day of March, A. D. 1931, 1st day of April, A. D. 1931, and the 13th day of April, A. D. 1931, it paid to the Merchants National Bank of Poughkeepsie the sum of $106.17, as alleged in said petition and denies that the securities held by said bank as collateral for said note did not exceed $15,000.00 in value.

43. Your respondent, for further answer, denies that said alleged three payments of $106.17 were made by it while it was insolvent, with intent to prefer said Merchants National Bank of Poughkeepsie over its other creditors of the same class, but states the fact to be that during the period between the 25th day of January, A. D. 1931, and the 5th day of May, A. D. 1931, your respondent was solvent in that its assets at a fair valuation as a going concern, exceeded its liabilities.

44. Your respondent, for further answer, denies that during such period from January 25, 1931, to May 5, 1931, your respondent, while insolvent, made numerous other large payments to various other creditors and other persons to whom it was seeking to prefer.

45. Your respondent, for further answer, denies that between January 25, 1931 and May 5, 1931, it made other large payments running into hundreds of thousands of dollars to various creditors or to anyone whatsoever in connection with the Whitehall property in Florida.

46. Your respondent, for further answer, denies that any payments of whatsoever amount were in the main made by [fol. 329] direction of the Chicago Title & Trust Company, or that the Chicago Title & Trust Company had any connection or interest or management over the affairs of your respondent during said period from January 25, 1931, to May 5, 1931.

47. Your respondent, for further answer denies that any payments whatsoever were made to any persons, corporations or banks whatsoever while it was, in fact, insolvent, or

that any preferential transfers whatsoever were made either in connection with the so-called Whitehall property or in connection with any other matter.

48. Your respondent, for further answer, denies that the adjudication upon the voluntary petition filed on September 5, 1931, would date only from that date and would also tend to validate the acts of said Equity Receivers, as alleged in said petition, and denies that the payment by the Equity Receivers to Crosby & Murphy of $5,207.06 was payment of an antecedent claim, but states the fact to be that the date of adjudication upon the voluntary petition filed herein would, upon consolidation with the involuntary petition filed on May 21, 1931, and which is now pending before this Honorable Court, relate back to the date of the filing of the first involuntary petition which was filed in this District, so that any voidable preferences or transfers made between January 25, 1931 and May 5, 1931, could be set aside upon proper proceedings, and further states the fact to be the payment by the Equity Receivers to Crosby & Murphy of $5,207.06 is not a payment of an antecedent claim but was a purchase by said Receivers under the order of the Equity Court of an audit which was beneficial to this estate.

49. Your respondent, for further answer, admits that the adjudication on said voluntary petition in bankruptcy was made without notice to said petitioner, but denies that said adjudication was in fraud of the order of this court or was in fraud of the jurisdiction required by the District Court [fol. 330] of the United States for the District of Maine and/or to the rights of said petitioner or the other petitioners in said involuntary bankruptcy proceedings so instituted in the District of Maine.

50. Your respondent, for further answer, denies that the filing of the voluntary petition is one of a long series of steps taken by or on behalf of the stockholders of over 85% of the common stock of this respondent, or namely, William J. Moore, Hattie K. Moore, Kenneth W. Moore, C. C. Moore, C. B. Moore, and Harold A. Moore, or that said voluntary petition was filed to control the liquidation of the affairs of your respondent or to prevent or hamper investigation of the alleged misconduct and alleged frauds of the said

Moores or to prevent any interested party or parties from obtaining adequate redress therefor, to evade the recovery of alleged preferential payments and transfers, but states the fact to be that the said voluntary petition was filed in good faith on the part of your respondent for the purpose of bringing to an end the long and costly litigation with respect to its affairs and to provide a speedy administration in accordance with the provisions of the bankruptcy act in this jurisdiction where the affairs of this respondent could be liquidated for the greatest convenience and best interest of all of the creditors of this estate, and that the said Moores had no control over the action of your respondent in the institution of the said bankruptcy proceedings whatsoever.

51. Your respondent, for further answer, admits that an agreement was entered into as of September 10, 1929, between your respondent and certain banks which were creditors of your respondent, but denies that the execution of said agreement was for the unlawful purposes set forth in said petition, but states the fact to be that said agreement, and the appointment of said Bankers' Committee, was for the purpose of conserving the property and assets of your respondent and was for the best interests of not only your respondent but all of the creditors and stockholders of your respondent.

[fol. 331] 52. Your respondent for further answer admits that on September 10, 1929 a further agreement was then made by the said Moores and other stockholders with the Chicago Title & Trust Company but denies that the Chicago Title & Trust Company took over the management of the affairs of your respondent as agent thereunder and for further answer denies that Herbert Becker was put in charge of the New York office of the American Bond and Mortgage Company, as alleged in said petition, and denies that Holman D. Pettibone was put in charge of the Chicago office of your respondent, as alleged in said petition and states the fact to be that the Chicago Title & Trust Company merely acted as Trustee of certain common stock of your respondent and that any and all business transacted in Illinois or elsewhere was in fact transacted by your respondent in pursuance to its corporate franchise; that on

to-wit: July 30, 1930 the said Chicago Title & Trust Company resigned under said agreement as of said date and that from August 1, 1930 to and including May 21, 1931 said Chicago Title & Trust Company acted merely as a depositary for the holders of the debenture bonds, preferred and common stock of your respondent.

53. Your respondent for further answer denies that the Chicago Title & Trust Company under the said Bankers' agreement of September 10, 1929 became interested as a representative of such banks as signed said agreement, except merely to act as depositary thereunder to receive excess collateral as provided in the sixth section of said Bankers' agreement or that said banks have received any preferential payments from your respondent between January 25, 1931 to May 5, 1931.

54. Your respondent, for further answer, denies that important officers and stockholders of the Chicago Title & Trust Company were closely affiliated with the said Moores and friendly to them.

55. Your respondent, for further answer, admits that the Chicago Title & Trust Company was one of the depositaries [fol. 332] of the Committee of the holders of debenture bonds of your respondent, the other depositary being the Title Guaranty & Trust Co. of New York.

56. Your respondent, for further answer, admits that the Chicago Title & Trust Company was one of the depositaries of a committee for the protection of the holders of the preferred stock of your respondent, but denies that said committee was self-appointed, and denies that the membership of said committee was instigated and brought about by the selection of the said Moores, and admits that the Moores, on or about the 15th day of July, 1930, transferred their stock in your respondent to voting trustees, and denies that the voting trustees were the nominees of the said Moores.

57. Your respondent, for further answer, denies that the said Moores procured the filing of the said bill in equity and the consent and answer thereto, and denies that the

said Moores had any connection with the said equity proceedings whatsoever.

58. Your respondent for further answer denies that the Chicago Title & Trust Company, your respondent, or the complainants in said equity bill, caused the filing of said involuntary petition in bankruptcy filed in this Court, and denies that said involuntary petition in bankruptcy was filed by persons friendly to the said Moores, or that the same was filed as a protective measure to ward off other bankruptcy proceedings until more than four months after the appointment and qualification of said Equity Receivers, and with no intention of prosecuting the same.

[fol. 333] 59. Your respondent, for further answer, denies that the said voluntary petition in bankruptcy filed herein was filed to prevent the entry of an order of adjudication in the District Court of Maine or to prevent inquiry into the transactions of your respondent, its officers and stockholders, or to prevent the invalidation of said alleged preferential payments.

Your respondent now having fully answered said petition, prays that said petition be dismissed upon the following grounds:

1. Your respondent had the right to file its said petition in bankruptcy and to be adjudged a bankrupt thereon.

2. Your respondent did, in fact, have its principal place of business in this District for the greater portion of six months next preceding the date of the filing of said petition.

3. The petition fails to show that the Royal Indemnity Company has a provable claim within the meaning of the United States Bankruptcy Act.

4. The petitioner has no standing to maintain its action to set aside the adjudication entered in this cause or to question the authority of the Board of Directors of your respondent to authorize the filing of said voluntary petition in bankruptcy.

5. That upon a consolidation of the voluntary petition and the involuntary petition filed in this District, all voidable preferences may be set aside by proper proceedings.

6. Said petition contains scandalous and impertinent matters which have no bearing or connection with the relief sought by the said petition.

American Bond and Mortgage Company, by Arthur W. Draper, President. A. L. Shapiro, H. E. Am-
[fols. 334 & 335] bler, Solicitors for American Bond and Mortgage Company.

Duly sworn to by Arthur W. Draper. Jurat omitted in printing.

[fols. 336 & 337] IN UNITED STATES DISTRICT COURT

48011

[Title omitted]

ORDER OF REFERENCE—Feb. 2, 1932

This day comes the bankrupt by its solicitor and enters herein motion to set for hearing the petition of the Royal Indemnity Company and the amended answer of the bankrupt thereto.

It is ordered that said petition and answer be and the same are hereby referred to Garfield Charles as Special Master to hear and present his conclusions and recommendations to this court.

[fols. 338 & 339] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

ORDER GRANTING LEAVE TO FILE INTERVENING PETITIONS, ETC.—Feb. 15, 1932

On motion of solicitor for the petitioners Charles T. Trigg, Charles M. Winchester, William Lawrie, Katie De Friez, J. L. Hone, Agnes E. Larkin, Jesse H. Owens, Parker D. Wendall, Lloyd S. Cheney, S. J. Sennett, Bertha

Verby, Frances C. & Dr. M. A. Losee, Ralph W. Eldredge, Daniel Larkin and Newell Becker,

It is ordered that leave be and the same is hereby given the said petitioners to file instanter intervening petitions herein.

It is ordered that all parties interested be and they are hereby required to answer said petitions within five (5) days from this date.

[fol. 340] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

PETITION OF CHARLES M. WINCHESTER—Filed Feb. 15, 1932

To the Honorable Judges of said Court, in bankruptcy sitting:

1. On or about March 1, 1927 the said alleged bankrupt, American Bond & Mortgage Company (hereinafter called "American Bond") made and executed its certain 6½% sinking fund gold debenture bonds (so-called) No. 6094-6096 in the amount of $1,000 each wherein, for value received, it promised to pay the said sum of $2,000 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bonds, the sum of $2,000, to wit on or about the 15th day of March, 1928.

This petitioner's said bonds were duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Company as required by its terms and are Bonds No. 6094-6096.

The said bonds further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, [fol. 341] such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bonds were of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bonds provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930, the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bonds, and has not paid any interest thereon since that date.

No part of the said bonds No. 6094-6096 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupons maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in March, 1928, he has ever been and now is the owner and holder of said bonds and coupons, which are not secured, and this petitioner [fol. 342] holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

2. Your petitioner further shows that he has read the petition of the Royal Indemnity Company, dated September 19, 1931 and duly filed herein, wherein the said Royal Indemnity Company prays for an order vacating the orders entered herein on September 5, 1931 adjudging the said American Bond bankrupt and referring the cause to the referee in bankruptcy, Garfield Charles, Esq., and praying that the said voluntary petition be dismissed for lack of jurisdiction.

3. Your petitioner shows that he has also read the supplemental petition of the said Royal Indemnity Company, dated October 26, 1931, and duly filed herein.

4. Your petitioner further shows that with the exception of the first paragraph of the said petition of the Royal Indemnity Company, dated September 19, 1931, which deals with the claim of the Royal Indemnity Company,

your petitioner hereby adopts the allegations of the said petition of the Royal Indemnity Company and the allegations of the said supplemental petition of the Royal Indemnity Company with the same force and effect as though the allegations were contained in and made a part of this intervening petition, and your petitioner alleges that those allegations are true to your petitioner's knowledge.

Wherefore your petitioner prays that an order be entered herein vacating the orders entered on September 5, 1931 in the above entitled cause adjudging the American Bond bankrupt and referring the said cause to the referee in bankruptcy, Garfield Charles, Esq., for the reasons [fol. 343] stated in the said petition of the Royal Indemnity Company, dated September 19, 1931, and that the said voluntary petition be dismissed for lack of jurisdiction, and that your petitioner have such other and further relief as may be just. And your petitioner will ever pray.

Dated New York, February 9, 1932.

Chas. M. Winchester, Moses, Kennedy, Stein & Bachrach, Selden Bacon, Saul S. Myers, Attorneys and Counsel for Charles M. Winchester.

[fols. 344 & 345] *Duly sworn to by Chas. M. Winchester. Jurat omitted in printing.*

[fol. 346] In United States District Court

No. 48011

[Title omitted]

Petition of Charles T. Trigg—Filed Feb. 15, 1932

To the Honorable Judges of said Court, in bankruptcy sitting:

1. On or about March 1, 1927 the said alleged bankrupt, American Bond & Mortgage Company (hereinafter called "American Bond") made and executed its certain 6½% sinking fund gold debenture bond (so-called) No. D-3255 in the amount of $500 wherein, for value received, it promised to pay the said sum of $500 on March 1, 1937.

This petitioner paid to said American Bond for said debenture bond, the sum of $500, to-wit on or about the 29th day of July, 1927.

This petitioner's said bond was duly authenticated at the time of the purchase thereof by endorsement thereon by the Chicago Title & Trust Company as required by its terms and is Bond No. D-3255.

The said bond further provided that until such principal sum was paid, the said alleged bankrupt would pay interest thereon from March 1, 1927 at the rate of 6½% per annum, [fol. 347] such interest to be payable semi-annually on the 1st day of March and the 1st day of September in each year. The said bond was of a duly authorized issue of bonds of the said alleged bankrupt for the aggregate principal amount of $5,000,000 all of which bonds were of like tenor except as to denomination.

The said bond provided that

"In case of default in the payment of any installment of interest on any bond of said issue, and the continuance thereof for a period of sixty days, the principal of all of the bonds of said issue may be declared due and payable prior to their regular maturity, in the manner and upon the conditions expressed in said indenture, and may also be declared due and payable prior to such maturity upon the occurrence and continuance of other defaults as in said indenture provided."

On the 1st day of March, 1930, the said American Bond made default which has ever since continued in the payment of the interest due on its said debenture bond, and has not paid any interest thereon since that date.

No part of the said bond No. D-3255 (except coupons maturing prior to March 1, 1930) has been paid, although payment has been duly demanded, and the whole amount thereof, with interest from March 1, 1930, besides the said coupon maturing on that day, now remains due, owing and unpaid from the said alleged bankrupt to your petitioner, who from his said purchase in July, 1927 has ever been and now is the owner and holder of said bond and coupons, [fol. 348] which are not secured, and this petitioner holds no security for the said indebtedness to this petitioner of the said alleged bankrupt.

2. Your petitioner further shows that he has read the petition of the Royal Indemnity Company, dated September 19, 1931 and duly filed herein, wherein the said Royal Indemnity Company prays for an order vacating the orders entered herein on September 5, 1931 adjudging the said American Bond bankrupt and referring the cause to the referee in bankruptcy, Garfield Charles, Esq., and praying that the said voluntary petition be dismissed for lack of jurisdiction.

3. Your petitioner shows that he has also read the supplemental petition of the said Royal Indemnity Company, dated October 26, 1931, and duly filed herein.

4. Your petitioner further shows that with the exception of the first paragraph of the said petition of the Royal Indemnity Company, dated September 19, 1931, which deals with the claim of the Royal Indemnity Company, your petitioner hereby adopts the allegations of the said petition of the Royal Indemnity Company and the allegations of the said supplemental petition of the Royal Indemnity Company with the same force and effect as though the allegations were contained in and made a part of this intervening petition, and your petitioner alleges that those allegations are true to your petitioner's knowledge.

Wherefore your petitioner prays that an order be entered herein vacating the orders entered on September 5, 1931 in the above entitled cause adjudging the American Bond bankrupt and referring the said cause to the referee in bankruptcy, Garfield Charles, Esq., for the reasons [fol. 349] stated in the said petition of the Royal Indemnity Company, dated Setpember 19, 1931, and that the said voluntary petition be dismissed for lack of jurisdiction, and that your petitioner have such other and further relief as may be just. And your petitioner will ever pray.

Dated New York, February 8, 1932.

Charles T. Trigg. Moses, Kennedy, Stein & Bachrach, Selden Bacon, Saul S. Myers, Attorneys and Counsel for Charles T. Trigg.

[fols. 350-429] *Duly sworn to by Charles T. Trigg. Jurat omitted in printing.*

[fols. 430 & 431] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

ORDER GRANTING LEAVE TO FILE ANSWER TO INTERVENING PETITIONS—Feb. 25, 1932

On motion of solicitor for the bankrupt

It is ordered that leave be and the same is hereby given the bankrupt to file instanter its answer to intervening petitions of Charles T. Trigg, S. J. Sennett, William Lawrie, Lloyd S. Cheney, Charles M. Winchester, Katie DeFriez, Bertha Verby, Parker D. Wendall, Newell Becker, J. L. Hone, Daniel Larkin, Jesse H. Owens, Ralph W. Eldredge, Frances C. Losee and Dr. M. A. Losee and Agnes E. Larkin.

[fol. 432] IN UNITED STATES DISTRICT COURT

No. 48011

[Title omitted]

JOINT AND SEVERAL ANSWER OF AMERICAN BOND AND MORTGAGE COMPANY, BANKRUPT, TO PETITIONS OF CHARLES T. TRIGG, S. J. BENNETT, WILLIAM LAWRIE, LLOYD S. CHENEY, CHARLES M. WINCHESTER, KATIE DE FRIEZ, BERTHA VERBY, PARKES D. WENDELL, NEWELL BECKER, J. L. HONE, DANIEL LARKIN, JESSE H. OWENS, RALPH W. ELDREDGE, FRANCES C. LOSEE AND DR. M. A. LOSEE, AND AGNES E. LARKIN—Filed Feb. 25, 1932

Your respondent now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said petitions contained for answer thereunto, or to so much and such parts thereof as your respondent is advised it is or are material or necessary for it to make answer unto, answering says, etc.

Your respondent admits that Charles T. Trigg is a creditor of your respondent with a provable claim or debt in an

amount exceeding $500.00 and that said debt arises out of the issuance to him by your respondent of one certain 6½% sinking fund gold debenture bond, number D-3255, in the sum of $500.00 and admits that your respondent has defaulted in the terms and provisions of said bond.

Your respondent admits that S. J. Bennett is a creditor of your respondent with a provable claim or debt in an amount exceeding $500.00 and that said debt arises out of the issuance to him by your respondent of one certain 6½% sinking fund gold debenture bond, number 4384, in the sum [fol. 433] of $500.00 and admits that your respondent has defaulted in the terms and provisions of said bond.

Your respondent admits that William Lawrie is a creditor of your respondent with a provable claim or debt in an amount exceeding $1000.00 and that said debt arises out of the issuance to him by your respondent of two certain 6½% sinking fund gold debenture bonds, numbers 4803 and 4804, in the sum of $500.00 each and admits that your respondent has defaulted in the terms and provisions of said bonds.

Your respondent admits that Lloyd S. Cheney is a creditor of your respondent with a provable claim or debt in an amount exceeding $1500.00 and that said debt arises out of the issuance to him by your respondent of two certain 6½% sinking fund gold debenture bonds, numbers 8781 and 4425, in the sum of $1000.00 and $500.00 respectively, and admits that your respondent has defaulted in the terms and provisions of said bonds.

Your respondent admits that Charles N. Winchester is a creditor of your respondent with a provable claim or debt in an amount exceeding $2000.00 and that said debt arises out of the issuance to him by your respondent of two certain 6½% sinking fund gold debenture bonds, numbers 6084 and 6096, in the sum of $1000.00 each, and admits that your respondent has defaulted in the terms and provisions of said bonds.

Your respondent admits that Katie de Friez is a creditor of your respondent with a provable claim or debt in an amount exceeding $500.00 and that said debt arises out of the issuance to her by your respondent of one certain 6½% sinking fund gold debenture bond, number D-4319, in the sum of $500.00, and admits that your respondent has defaulted in the terms and provisions of said bond.

Your respondent admits that Bertha Verby is a creditor of your respondent with a provable claim or debt in an [fol. 434] amount exceeding $200.00 and that said debt arises out of the issuance to her by your respondent of two certain 6½% sinking fund gold debenture bonds, numbers 1498 and 1540, in the sum of $100.00 each, and admits that your respondent has defaulted in the terms and provisions of said bonds.

Your respondent admits that Parkes D. Wendell is a creditor of your respondent with a provable claim or debt in an amount exceeding $1000.00 and that said debt arises out of the issuance to him by your respondent of one certain 6½% sinking fund gold debenture bond, number 8089, in the sum of $1000.00, and admits that your respondent has defaulted in the terms and provisions of said bond.

Your respondent admits that Newell Becker is a creditor of your respondent with a provable claim or debt in an amount exceeding $1000.00 and that said debt arises out of the issuance to him by your respondent of one certain 6½% sinking fund gold debenture bond, number 8783, in the sum of $1000.00, and admits that your respondent has defaulted in the terms and provisions of said bond.

Your respondent admits that J. L. Hone is a creditor of your respondent with a provable claim or debt in an amount exceeding $500.00 and that said debt arises out of the issuance to him by your respondent of one certain 6½% sinking fund gold debenture bond, number 4827, in the sum of $500.00, and admits that your respondent has defaulted in the terms and provisions of said bond.

Your respondent admits that Daniel Larkin is a creditor of your respondent with a provable claim or debt in an amount exceeding $500.00 and that said debt arises out of the issuance to him by your respondent of one certain 6½% sinking fund gold debenture bond, number 4634, in the sum of $500.00, and admits that your respondent has defaulted in the terms and provisions of said bond.

[fol. 435] Your respondent admits that Jesse H. Owens is a creditor of your respondent with a provable claim or debt in an amount exceeding $1,000.00 and that said debt arises out of the issuance to him by your respondent of one certain 6½% sinking fund gold debenture bond, number 8005, in the sum of $1,000.00, and admits that your

respondent has defaulted in the terms and provisions of said bond.

Your respondent admits that Ralph W. Eldredge is a creditor of your respondent with a provable claim or debt in an amount exceeding $600.00 and that said debt arises out of the issuance to him by your respondent of two certain 6½% sinking fund gold debenture bonds, numbers 1618 and 3440, in the sum of $100.00 and $500.00 respectively, and admits that your respondent has defaulted in the terms and provisions of said bonds.

Your respondent admits that Frances C. Losee and Dr. M. A. Losee are creditors of your respondent with a provable claim or debt in an amount exceeding $1,000.00 and that said debt arises out of the issuance to them by your respondent of one certain 6½% sinking fund gold debenture bond, number 8082, in the sum of $1,000.00, and admits that your respondent has defaulted in the terms and provisions of said bond.

Your respondent admits that Agnes E. Larkin is a creditor of your respondent with a provable claim or debt in an amount exceeding $500.00 and that said debt arises out of the issuance to her by your respondent of one certain 6½% sinking fund gold debenture bond, number 4627, in the sum of $500.00, and admits that your respondent has defaulted in the terms and provisions of said bond.

Your respondent for further answer to said petitions shows unto the Court that it has heretofore on the 2nd day of February, A. D. 1932, filed its amended answer to the petition of the Royal Indemnity Company, wherein it [fol. 436] has made full and true answer to all of the allegations therein set forth and, therefore, prays that its said amended answer be permitted to stand and deemed to be an answer to the several petitions hereinabove referred to, with the same force and effect as though each and all of said allegations contained in said amended answer were herein at length set forth.

Your respondent now having fully answered said petitions prays that said petitions be dismissed upon the following grounds:

(1) Your respondent had the right to file its said petition in bankruptcy and to be adjudged a bankrupt thereon.

(2) Your respondent did, in fact, have its principal place of business in this District for the greater portion of six months next preceding the date of the filing of said petition.

(3) The said petitioners have no standing to maintain their action to set aside the adjudication entered in this cause or to question the authority of the Board of Directors of your respondent to authorize the filing of said voluntary petition in bankruptcy.

(4) That upon a consolidation of the voluntary petition and the involuntary petition filed in this District, all voidable preference may be set aside by proper proceedings.

American Bond and Mortgage Company, by Arthur W. Draper. A. L. Schapiro, H. E. Ambler, Solicitors for American Bond and Mortgage Company.

[fols. 437 & 438] *Duly sworn to by Arthur W. Draper. Jurat omitted in printing.*

[fol. 439] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 48011

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Bankrupt

MEMORANDUM OPINION—March 23, 1932

The American Bond and Mortgage Company is a corporation organized and existing under the laws of the State of Maine. On May 21, 1931, a bill in equity was filed in this court by T. H. Clarke and others, general creditors of American Bond and Mortgage Company, against that company, wherein it was alleged, among other things, that the company was solvent, that the properties and assets of the company had an aggregate value in excess of the aggregate amount of its indebtedness, but that said properties and assets, for reasons therein set forth could only be realized upon gradually unless a considerable sacrifice

was to be made, and wherein it was prayed that, in order to preserve and protect the properties and assets of the company, and in order that they might be held together and otherwise disposed of in the most advantageous manner, this court forthwith appoint a receiver of the property and assets of every nature, wheresoever situate, held or controlled by the company, with full power to take into his or their possession and to hold such property and assets, and to continue, manage and operate as a whole the business then being conducted by the company. On May 22, 1931, on said bill and the answer of the company thereto, this court rendered its order, appointing Chicago Title & Trust Company receiver of American Bond and Mortgage [fol. 440] Company. The order appointing the receiver provides in part:

"(1) That the defendant, though appearing to own properties and assets which at a fair valuation exceed its liabilities, is now unable to meet its immediate maturing obligations and will so continue for a considerable time; * * * that it is necessary for the protection and preservation of the respective rights and equities of the complainants and of all other creditors of the defendant that the assets, property and business of the defendant be preserved and administered as an entirety through a Receiver to be appointed herein, * * *.

"(2) That the Chicago Title and Trust Company be, and it hereby is, appointed Receiver of the above named American Bond & Mortgage Company, and of all of its property, rights and assets, of every nature and wheresoever situated, owned or controlled by the defendant, or in which it has an interest, with full power and authority to take into his possession and to hold such property and assets, and to continue to manage and operate as a whole the business now being conducted by the defendant.

* * * * * * *

"(4) That said Receiver be authorized and empowered to continue the operation of the business of the defendant * * *; to continue existing agreements, arrangements, commitments and relations of the defendant to and with other corporations, firms and individuals to the extent that

said Receiver may deem advisable until the further order of this court; to perform existing contracts of the defendant to the extent that performance thereof may seem to said Receiver desirable and profitable; to enter into and perform other contracts in the regular course or conduct of the business of the defendant, or otherwise; * * *"

On September 5, 1931, a voluntary petition in bankruptcy was filed in this court by American Bond and Mortgage Company, and an adjudication was immediately entered thereon.

The present petition is by Royal Indemnity Company to vacate that adjudication on the voluntary petition, and to dismiss the voluntary proceeding, on the ground that there was no jurisdiction in this court to adjudicate bankruptcy of American Bond and Mortgage Company, as it had not had its principal place of business in this district after the appointment of the equity receivers (a period which covered the greater portion of the six months next preceding the voluntary petition), and also on the ground that, under the laws of Maine, a board of directors of a corporation organized under the laws of that state have no power [fol. 441] to authorize the filing of a voluntary petition in bankruptcy in the corporate name, but that this can be done only by a vote of the stockholders at a meeting duly called for that purpose. It is apparently agreed that the filing of the voluntary petition was authorized by the board of directors of American Bond and Mortgage Company in meeting assembled, but was not authorized by the stockholders in meeting assembled, *but was not authorized by the stockholders in meeting assembled.*

On the argument which took place before this court on February 27, 1932, counsel for petitioner, Royal Indemnity Company, (with the acquiescence of counsel for the other parties) presented the two questions set forth in the next preceding paragraph hereof to the court for determination, as being questions which, if decided in favor of petitioner, Royal Indemnity Company, would be decisive of the issues made on the petition of Royal Indemnity Company, filed herein on November 11, 1931.

An examination of the bill of complaint in the equity receivership case, the answer thereto, and the order appointing the receiver, leads the court to the conclusion that it

was the intent of the parties to that proceeding and of the court that the business of American Bond and Mortgage Company was not to be destroyed, but, on the contrary, was to be conserved and preserved. Since this was the purpose of the parties and of the court in that proceeding, the court holds that American Bond and Mortgage Company did not, because of the appointment of an equity receiver on May 22, 1931, cease to do business on that day, and, accordingly, did not, on that date, cease to have a place of business in the Northern District of Illinois.

We pass now to the question whether this court did not have jurisdiction to adjudicate American Bond and Mortgage Company bankrupt because of lack of authority or power in the board of directors of that company to file a voluntary petition without prior authority from the stock- [fols. 442 & 442½] holders in meeting assembled.

It may be that the laws of Maine require the authorization of the stockholders in meeting assembled before a voluntary bankruptcy proceeding may be instituted by a Maine corporation, but if the board of directors of a Maine corporation authorize the filing of a voluntary bankruptcy proceeding, and such proceeding is filed in a court which otherwise has jurisdiction, it is exceedingly difficult to see what concern it is of a creditor whether that proceeding has been formally authorized by stockholders. As the court views the situation, a creditor is not at all concerned with this question, and this view has support in the authorities. In Re Ann Arbor Mach. Corp., 274 Fed. 24; In re Wagy & Co., 22 Fed. (2d.) 9. The court holds that this question cannot be raised by a creditor.

Counsel may forthwith present an order in accordance with the views herein expressed.

Dated this 23rd day of March, 1932.

John P. Barnes, Judge United States District Court.

[fol. 443] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 48011

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Corporation, Bankrupt

ORDER DENYING MOTIONS TO VACATE AND DISMISS, ETC.—April 6, 1932

At Chicago, Illinois, this cause having come on to be heard this 6th day of April, A. D. 1932, upon the motions of the Royal Indemnity Company and Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie De Friez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin, and Newell Becker, intervening petitioners herein (in accordance with Federal Equity Rule No. 29), to have separately heard and disposed of before the trial or hearing of the petition and supplemental petition of the Royal Indemnity Company and the intervening petitions of said intervening petitioners aforesaid heretofore filed by them herein and the answers thereto filed by the American Bond and Mortgage Company, the two points of law challenging the jurisdiction of this Court to adjudicate the American Bond and Mortgage Company bankrupt raised by said Royal Indemnity Company and said intervenors, in support of the interlocutory motion of the Royal Indemnity Company and said intervenors to set aside the order of adjudication in bankruptcy entered herein on September 5, 1931, and to dismiss the voluntary petition of the American Bond and Mortgage Company filed on said date;

And the Court having considered the said points of law raised by said allegations in said petitions of the Royal Indemnity Company and said intervenors and in the allegations contained in the said answers thereto filed by said American Bond and Mortgage Company and having heard the arguments of counsel and being fully advised in the premises, now hears and disposes of said two points of law before the trial or hearing of said petitions of Royal In-

demnity Company and said intervenors, adversely to them as hereinafter appears, and accordingly, the Court does make the following conclusions of law:

1. The Court concludes that as a matter of law, the American Bond and Mortgage Company did not because of the appointment of equity receivers on May 22, 1931, cease to do business on that day, and accordingly did not, on that date, cease to have a place of business in the Northern District of Illinois.

2. The Court concludes that as a matter of law, said [fols. 444 & 445] petitioners claiming to enjoy the status of creditors and no other status, cannot raise the question as to the power or authority of the board of directors of the American Bond and Mortgage Company, a Maine corporation, to authorize the filing of a voluntary bankruptcy proceeding where such a proceeding is filed in a court which otherwise has jurisdiction.

It is therefore ordered that the motions aforesaid and each of them, of the Royal Indemnity Company and said intervening creditors, to vacate the order of adjudication and to dismiss the said proceedings because of said points of law and each of them, be and the same are hereby denied, and

It is further ordered that said petitions of the Royal Indemnity Company and of said intervenors and the said answers thereto, proceed to hearing, and that said Royal Indemnity Company and said intervenors close their proof in support of their respective petitions on or before April 21st, 1932, such hearing to be consistent with this order and with the memorandum of opinion filed by this court on March 23, 1932.

Enter.

John P. Barnes, Judge United States District Court.

[fols. 446 & 447] IN UNITED STATES DISTRICT COURT

48011

[Title omitted]

ORDER DENYING MOTION FOR EXTENSION OF TIME—April 21, 1932

This day come the petitioners, Royal Indemnity Company and intervening petitioners by their solicitors and enter herein their motion that time to close their proofs in support of their petitions be extended and after arguments of counsel and due deliberation by the court said motion is overruled and denied.

[fol. 448] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 48011

In the Matter of AMERCAN BOND & MORTGAGE CO., a Corporation, Bankrupt

REPORT OF REFEREE AS SPECIAL MASTER IN RE PETITION OF ROYAL INDEMNITY CO. AND ANSWER OF BANKRUPT—Filed April 27, 1932

To the Honorable John P. Barnes, Judge of said Court:

February 2, 1932, Honorable James H. Wilkerson, Judge of said court, entered an order referring the petition of the Royal Indemnity Company and the answer of the bankrupt thereto to me as Special Master to hear and report my conclusions to the court.

February 2, 1932, at the hour of 2 o'clock P. M., A. L. Schapiro, attorney for American Bond & Mortgage Company, bankrupt, and Julius Moses, attorney for the Royal Indemnity Company, appeared before me. Said Schapiro moved that the petition and answer be set for hearing. Said Moses stated to the court that when the matter of reference came on before Judge Wilkerson on the morning of the day they appeared before me, he was unable to be present, but that if he had been present he would have

opposed a reference to any Referee because Judge Wilkerson had heard arguments on said petition and answer, was familiar with the law as presented by the parties on said petition and answer, and probably had some notions as to his conclusions, and therefore, was of opinion that the matter should be heard by him. I replied to counsel that I [fols. 449 & 450] was ready and willing to set the matter down for immediate hearing. Said Moses responded with a request that he be given 30 or 45 days in which to take depositions. I replied that I did not know that it would require so long a time. He opposed the setting of the matter before me, and I suggested that they return to Judge Wilkerson and inform him that I was ready to proceed, but that in view of the statement made by said Moses, he might hear the matter himself.

Neither the attorney for the bankrupt nor the attorney for the Royal Indemnity Company has been before me since that time, and at no time has any evidence been offered or produced in connection with the petition and answer hereinabove referred to.

Respectfully submitted.

Garfield Charles, Referee, as Special Master.

Dated Chicago, April 27, A. D. 1932.

[fol. 451] In United States District Court for the Northern District of Illinois, Eastern Division

No. 48011

In the Matter of American Bond and Mortgage Company, a Corporation, Bankrupt

Decree—May 3, 1932

Present: The Honorable John P. Barnes, United States District Judge.

This matter coming on this day to be heard upon the motion of the American Bond and Mortgage Company, the bankrupt herein, praying for the entry of an order denying the intervening petitions of the Royal Indemnity Company and Charles T. Trigg, Parkes D. Wendell, Charles M. Win-

chester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin, and Newell Becker, and it appearing to the Court that due notice of said motion was duly given to the attorneys for said intervening petitioners, the Court, being fully advised in the premises, does find as follows:

1. That the Royal Indemnity Company and Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, intervening petitioners, have failed to introduce any evidence in support of their said petitions.

2. That the time fixed by the order of this Court for the closing of proof on the part of said petitioners expired April 21, 1932.

3. That the points of law raised by said petitions and the answer of the bankrupt thereto have been decided adversely to said petitioners.

4. That at the time of the filing of the voluntary petition in bankruptcy by the American Bond and Mortgage Company, a corporation, and at the date of the order of adjudication in bankruptcy entered herein on September 5, 1931, this Court had jurisdiction to adjudicate the said American Bond and Mortgage Company, a corporation, a bankrupt and had jurisdiction of its person and property.

It is, therefore, ordered, adjudged and decreed that the intervening petitions of the Royal Indemnity Company and Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, praying that an order be entered herein vacating the orders [fol. 452] entered on September 5, 1931 in the above entitled cause adjudging the American Bond and Mortgage Company bankrupt and referring said cause to Referee in

Bankruptcy Garfield Charles, Esq. and that the voluntary petition filed by said American Bond and Mortgage Company be dismissed for lack of jurisdiction, be and the same hereby are denied.

John P. Barnes, United States District Judge.

Dated at Chicago, Illinois, this 3rd day of May, A.D. 1932.

[fol. 453] In United States District Court

No. 48011

[Title omitted]

Præcipe for Transcript of Record—Filed May 9, 1932

To the Honorable Charles M. Bates, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, at Chicago, Illinois:

The Clerk will please prepare a transcript of record of the above entitled cause for filing in the United States Circuit Court of Appeals for the Seventh Judicial Circuit at Chicago, in appeal proceedings No. 4781 (entitled: In The Matter Of American Bond and Mortgage Company, a Maine Corporation, Alleged Bankrupt, In The Matter Of The Appeal of the Royal Indemnity Company and Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, from Order entered on April 6th, 1932, by said United States District Court for the Northern District of Illinois, Eastern Division, at Chicago, in said bankruptcy proceedings No. 48011) and incorporate therein the following:

1. Placita.
2. Petition for Adjudication filed September 5, 1931.
3. Order of Adjudication and reference to Referee Garfield Charles on September 5, 1931.
4. Order of September 5, 1931, continuing motion for appointment of receiver in bankruptcy, to September 10, 1931.

[fol. 454] 5. Notice filed on September 10, 1931 by attorneys for Royal Indemnity Company.

6. Order of September 10, 1931, entering and continuing motion of Royal Indemnity Company to file its petition to September 22nd, 1931.

7. Order of September 10, 1931, entering and continuing motion of appointment of bankruptcy receiver, to September 23, 1931.

8. Order of September 23, 1931, continuing motion of Royal Indemnity Company to file its petition, to October 19th, 1931.

9. Order of September 23rd, 1931, continuing motion for appointment of bankruptcy receiver to October 10th, 1931.

10. Order of October 19th, 1931, continuing Royal Indemnity Company's motion for leave to file its petition, and the motion for bankruptcy receiver, to October 27, 1931.

11. Orders, if any, of October 27, 1931, taking under advisement said motions for leave to file petition of Royal Indemnity Company and motion to appoint bankruptcy receiver.

12. Order of November 11, 1931, giving leave to Royal Indemnity Company to file its petition and supplementary petition and rule on all parties to plead thereto in twenty days, and continuing motion for bankruptcy receiver.

13. November 11, 1931, petition of Royal Indemnity Company and its supplement thereto, and certified copy of order of adjudication in Maine bankruptcy proceedings of American Bond and Mortgage Company annexed to said supplement.

14. December 8, 1931, answer of American Bond and Mortgage Company to Royal Indemnity Company's petition.

15. February 2nd, 1932, amended answer of American Bond and Mortgage Company to petition of Royal Indemnity Company.

16. February 2nd, 1932, order referring petition and supplement thereto of Royal Indemnity Company and amended answer of bankrupt to Referee Charles, as Special Master, etc.

17. Order of February 15, 1932, giving leave to Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby,

Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker and Parkes D. Wendell to file intervening petitions in five days.

18. February 15th, 1932, intervening petitions of Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker and Parkes D. Wendell.

19. Order of February 25th, 1932, giving leave to bankrupt to file answers to said intervening petitions.

20. February 25th, 1932, joint and several answer of American Bond and Mortgage Company to said intervening petitions.

21. March 23, 1932, Opinion filed by Judge Barnes.

22. Interlocutory Order of April 6th, 1932, entered by Judge Barnes.

[fol. 455] 22½. Order denying extension of time to offer proof by Royal Indemnity Co. et al., on Apr. 21, 1932.

23. Report of Master Garfield Charles, dated April 27, 1932.

24. Final Order of May 3rd, 1932, entered by Judge Barnes, dismissing petitions of Royal Indemnity Company et al.

Moses, Kennedy, Stein & Bachrach, Solicitors for Royal Indemnity Company, Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. H. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker.

Dated Chicago, Illinois, May 9, 1932.

[File endorsement omitted.]

[fols. 456-40] Clerks' certificates to foregoing transcript omitted in printing.

[fol. 41] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 4781

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Maine Corporation, Alleged Bankrupt

Appeal from United States District Court for the Northern District of Illinois, Eastern Division

ASSIGNMENT OF ERRORS IN APRIL 6TH, 1932, ORDER—Filed May 6, 1932

Now come Royal Indemnity Company, a New York corporation, Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. H. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, and file the following assignment of errors on appeal from the order entered in the United States District Court for the Northern District of Illinois, Eastern Division, on April 6, 1932, by the Honorable John P. Barnes, as Judge of said District Court in bankruptcy proceeding No. 48011:

First. That said United States District Court for the Northern District of Illinois, Eastern Division, erred in said April 6, 1932 order in concluding therein as a matter of law:

1. That the American Bond and Mortgage Company did not, because of the appointment of equity receivers on May [fol. 42] 22, 1931, cease to do business on that day and, accordingly, on that day did not cease to have a place of business in the Northern District of Illinois.

2. That the Royal Indemnity Company and said Intervenors claiming to enjoy the status of creditors and no other status cannot raise the question as to the power or authority of the Board of Directors of the American Bond and Mortgage Company, a Maine corporation, to authorize the filing of a voluntary bankruptcy proceeding where such a proceeding is filed in a court which otherwise has jurisdiction.

Second. That said United States District Court for the Northern District of Illinois, Eastern Division, erred in not concluding in said April 6, 1932 order as a matter of law:

(a) That the American Bond and Mortgage Company, because of the appointment of said equity receivers on May 22, 1931 and their sole possession, control and operation of the business and of assets and property of American Bond and Mortgage Company since then, did cease to do business on May 22, 1931, and, accordingly, did on that date cease to have a place of business in the Northern District of Illinois;

[fol. 43] (b) That the "principal place of business" as used in section 2 (1) of the bankruptcy act, when applied herein, means the "place where the business was principally done" by the American Bond and Mortgage Company (for the greater portion of the six months before bankruptcy);

(c) That only by a resolution of the stockholders of the Maine corporation, can the voluntary petition in bankruptcy of such a corporation be authorized, under Section 63 of Chapter 56 of the Revised Statutes of Maine (1930) which reads:

"No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation."

That without such stockholders' resolution there is, in legal effect, no bankruptcy petition by American Bond and Mortgage Company on file therein and said Court is without jurisdiction: (1) as to the petition so filed on September 5, 1931, and (2) to adjudicate the American Bond and Mortgage Company bankrupt and administer its estate in bankruptcy;

[fol. 44] (d) That said Royal Indemnity Company and/or said Intervenors, as creditors of the American Bond and Mortgage Company, can raise, (and said Court should have

raised sua sponte) the question of such lack of jurisdiction arising by reason of the want of power or authority of the Board of Directors to authorize the filing of the voluntary bankruptcy petition in behalf of the American Bond and Mortgage Company.

Wherefore they pray that said April 6, 1932 order may be reversed and that they may have such other relief as to this Court may seem meet.

Royal Indemnity Company, Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. H. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin, and Newell Becker, by Julius Moses, Hamilton Moses, S. S. Stein, Walter Bachrach, Robert Bachrach, A. E. Soble, & Herbert H. Kennedy, Their Solicitors.

[fols. 44½-46] [File endorsement omitted.]

[fols. 47-70] In United States Circuit Court of Appeals

No. 4781

In the Matter of American Bond & Mortgage Co., Alleged Bankrupt

Royal Indemnity Company et al.

vs.

American Bond & Mortgage Company

Order Allowing Appeal—May 6, 1932

Now this day come the Royal Indemnity Company and Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, by their counsel, and present a petition for leave to appeal from the

order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered therein on May 6, 1932, in the Matter of American Bond and Mortgage Company, a Maine Corporation, alleged bankrupt.

On consideration whereof: It is ordered by the Court that leave be granted them to appeal, and an appeal is hereby allowed from said order entered April 6, 1932, as prayed for in said petition for leave to appeal.

[fol. 71] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 4782

In the Matter of AMERICAN BOND AND MORTGAGE COMPANY, a Maine Corporation, Alleged Bankrupt

Appeal from United States District Court for the Northern District of Illinois, Eastern Division

ASSIGNMENT OF ERRORS WITH RESPECT TO MAY 3, 1932, ORDER BY UNITED STATES DISTRICT COURT—Filed May 6, 1932

Now come Royal Indemnity Company, a New York corporation, Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. H. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, and file the following assignment of errors on appeal from the order entered in the United States District Court for the Northern District of Illinois, Eastern Division, on May 3, 1932, by the Honorable John P. Barnes, as Judge of said District Court in bankruptcy proceeding No. 48011:

First. That said United States District Court for the Northern District of Illinois, Eastern Division, erred in said May 3, 1932 order in concluding therein as a matter of law:

1. That the American Bond and Mortgage Company did not, because of the appointment of equity receivers on

May 22, 1931, cease to do business on that day and, accordingly, on that day did not cease to have a place of business in the Northern District of Illinois.

[fol. 72] 2. That the Royal Indemnity Company and said Intervenors claiming to enjoy the status of creditors and no other status cannot raise the question as to the power or authority of the Board of Directors of the American Bond and Mortgage Company, a Maine corporation, to authorize the filing of a voluntary bankruptcy proceeding where such a proceeding is filed in a court which otherwise has jurisdiction.

Second. That said United States District Court for the Northern District of Illinois, Eastern Division, erred in not concluding in said May 3, 1932, order as a matter of law:

(a) That the American Bond and Mortgage Company, because of the appointment of said equity receivers on May 22, 1931, and their sole possession, control and operation of the business and of assets and property of American Bond and Mortgage Company since then, did cease to do business on May 22, 1931, and, accordingly, did on that date cease to have a place of business in the Northern District of Illinois;

(b) That the "principal place of business" as used in section 2 (1) of the bankruptcy act, when applied herein, means the "place where the business was principally done" by the American Bond and Mortgage Company (for the greater portion of the six months before bankruptcy);

[fol. 72½] (c) That only by a resolution of the stockholders of the Maine corporation, can the voluntary petition in bankruptcy of such a corporation be authorized, under Section 63 of Chapter 56 of the Revised Statutes of Maine (1930) which reads:

"No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation."

That without such stockholders' resolution there is, in legal effect, no bankruptcy petition by American Bond and Mortgage Company on file therein and said Court is without jurisdiction: (1) as to the petition so filed on September 5, 1931, and (2) to adjudicate the American Bond and Mortgage Company bankrupt and administer its estate in bankruptcy;

(d) That said Royal Indemnity Company and/or said Intervenors, as creditors of the American Bond and Mortgage Company, can raise (and said Court should have raised sua sponte), the question of such lack of jurisdiction arising by reason of want of power or authority of the Board of Directors to authorize the filing of the voluntary bankruptcy petition in behalf of the American Bond and Mortgage Company.

[fol. 73] Third. That said United States District Court for the Northern District of Illinois, Eastern Division, erred in finding in said May 3, 1932, order that at the time of the filing of the voluntary petition in bankruptcy by the American Bond and Mortgage Company and at the date of the order of adjudication in bankruptcy entered on September 5, 1931, said United States District Court had jurisdiction to adjudicate the American Bond and Mortgage Company bankrupt and had jurisdiction of its person and property.

Fourth. That said United States District Court, for the Northern District of Illinois, Eastern Division, erred in said May 3, 1932, order in dismissing said petitions of the Royal Indemnity Company, a New York corporation, Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie De Friez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. H. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, and in denying same and in not granting said petitions and vacating said orders entered on September 5, 1931, adjudging the American Bond and Mortgage Company bankrupt and referring said cause to Referee in Bankruptcy Charles and in not dismissing said purported voluntary petition filed on September 5, 1931, in behalf of American Bond and Mortgage Company.

Wherefore they pray that said May 3, 1932, order may be reversed and that they may have such other relief as to this court may seem meet.

Royal Indemnity Company, Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie De Friez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. H. Hone, Agnes E. Larkin, Ralph [fols. 74-75] W. Eldredge, Jesse H. Owens, Daniel Larkin, and Newell Becker, by —— ——, Their Solicitors.

[fol. 76] In United States Circuit Court of Appeals

4782

In the Matter of American Bond & Mortgage Co., Alleged Bankrupt

Royal Indemnity Company et al.

vs.

American Bond & Mortgage Company

Order Allowing Appeal—May 6, 1932

Now this day come the Royal Indemnity Company and Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin, and Newell Becker, by their counsel, and present a petition for leave to appeal from the order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered therein on May 6, 1932, in the Matter of American Bond & Mortgage Company, a Maine Corporation, alleged bankrupt.

On consideration whereof: It is ordered by the court that leave be granted them to appeal, and an appeal is hereby allowed from said order, entered May 3, 1932, as prayed for in said petition for leave to appeal.

[fol. 77] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 4781

[Title omitted]

NOTICE—Filed May 20, 1932

To A. L. Shapiro, 33 S. Clark St., Chicago, Illinois, solicitor for American Bond and Mortgage Company:

Please take notice that we will today, Friday, May 20th, 1932, at 12:30 o'clock Noon, appear before the Honorable Evan Evans, Judge of said Court in the court room usually occupied by him in the Federal Building, Clark and Adams Streets, Chicago, and we will then and there present for entry an order, copy of which is handed you herewith; at which time and place you may appear if you see fit.

Moses, Kennedy, Stein & Bachrach, Solicitors for Royal Indemnity Company et al., Appellants.

Received a copy of the above notice and copy of the order therein referred to this 20th day of May, 1932.

A. L. Schapiro & B. C. Schiff, Solicitors for American Bond & Mortgage Company.

[File endorsement omitted.]

[fol. 78] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 4782

[Title omitted]

NOTICE—Filed May 20, 1932

To A. L. Shapiro, solicitor for American Bond and Mortgage Co., 33 S. Clark Street, Chicago, Illinois:

Please take notice that we will today, Friday, May 20th, 1932, at 12:30 noon, appear before the Honorable Evan

Evans, Judge of said Court in the court room usually occupied by him in the Federal Building, Clark and Adams Streets, Chicago, and we will then and there present for entry an order, a copy of which is handed you herewith; at which time and place you may appear if you see fit.

Moses, Kennedy, Stein & Bachrach, Solicitors for Royal Indemnity Company et al., Appellants.

Received copies of the above and foregoing Notice and Order therein referred to, this 20th day of May, 1932.

A. L. Schapiro & B. C. Schiff, Solicitor- for American Bond and Mortgage Company.

[File endorsement omitted.]

[fol. 79] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 4781 and 4782, Consolidated

[Title omitted]

NOTICE—Filed May 20, 1932

To A. L. Schapiro, solicitor for American Bond and Mortgage Co., 33 S. Clark St., Chicago, Illinois:

Please take notice that we will today, Friday, May 20th, 1932, at 12:30 Noon, appear before the Honorable Evan Evans, Judge of said Court in the court room usually occupied by him in the Federal Building, Clark and Adams Streets, Chicago, and we will then and there present for entry three orders, copies of which are handed you herewith, at which time and place you may appear if you see fit.

Moses, Kennedy, Stein & Bachrach, Solicitors for Royal Indemnity Company et al., Appellants.

Received copies of the above notice and orders therein referred to this 20th day of May, 1932.

A. L. Schapiro & B. C. Schiff, Solicitor- for American Bond and Mortgage Company.

[File endorsement omitted.]

[fol. 80] In United States Circuit Court of Appeals for the Seventh Circuit

No. 4781, No. 4782

[Title omitted]

Stipulation as to Transcript—Filed May 20, 1932

It is hereby stipulated by Appellants herein by their Solicitors and by Appellee herein by its Solicitors, that the Transcript of record of bankruptcy proceeding No. 48011 in the United States District Court for the Northern District of Illinois, Eastern Division, In the Matter of American Bond and Mortgage Company, a Corporation, when filed in the United States Circuit Court of Appeals for the Seventh Circuit at Chicago in appeal proceeding No. 4781 entitled: In the Matter of American Bond and Mortgage Company, a Maine Corporation, Alleged Bankrupt, may be considered as filed in said appeal proceeding No. 4782 and used therein upon said appeal No. 4782 as if said transcript of record had been duly filed in said appeal proceeding No. 4782.

It is further stipulated by the parties hereto that this stipulation shall be without prejudice to any motion of Appellee for a dismissal of either or both of said appeal proceedings.

Dated Chicago, Illinois, May 9th, 1932.

Moses, Kennedy, Stein & Bachrach, Solicitors for Royal Indemnity Company, a New York Corporation; Charles T. Trigg, Parkes D. Wendell, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, Appellants. A. L. Shapiro & B. C. Schiff, Solicitors for American Bond & Mortgage Company, Appellee.

[File endorsement omitted.]

[fol. 81] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 4781

[Title omitted]

ORDER OF CONSOLIDATION—May 21, 1932

This cause coming on to be heard herein this 21st day of May, A. D. 1932, on the motion of appellants for consolidation of this appeal proceeding No. 4781, with appeal proceeding No. 4782, entitled: In the Matter of American Bond & Mortgage Company, Alleged Bankrupt, likewise pending herein,

Now, therefore, good cause for such consolidation appearing to this court, it is hereby ordered that this appeal proceeding No. 4781, be, and it is hereby consolidated with said appeal proceeding No. 4782 so entitled; and

It is further ordered that this appeal proceedings No. 4781 and 4782 so consolidated shall be heard and disposed of together herein.

[fol. 82] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 4782

[Title omitted]

ORDER OF CONSOLIDATION—May 21, 1932

This cause coming on to be heard herein this 21st day of May, A. D. 1932, on the motion of appellants for consolidation of this appeal proceeding No. 4782, with appeal proceeding No. 4781, entitled: In the Matter of American Bond and Mortgage Company, a Maine Corporation, Alleged Bankrupt, likewise pending herein.

Now, therefore, good cause for such consolidation appearing to this Court, it is hereby ordered that this appeal proceeding No. 4781 so entitled; and

It is further ordered that said appeal proceedings Nos. 4781 and 4782 so consolidated shall be heard and disposed of together herein.

IN UNITED STATES CIRCUIT COURT OF APPEALS

4781 & 4782

[Title omitted]

ORDER AS TO TRANSCRIPT—May 21, 1932

This cause coming on to be heard herein this 21st day of May, 1932, on the motion of appellants for an order giving appellants leave to file in these consolidated appeal proceedings Nos. 4781 and 4782 the transcript of record of bankruptcy proceeding No. 48011 in the United States District Court for the Northern District of Illinois, Eastern Division, prepared in connection with said appeal proceeding No. 4781, and for its consideration in these consolidated proceedings, Nos. 4781 and 4782 pursuant to the written stipulation of the parties herein filed this day, good cause therefor appearing,

[fol. 83] It is ordered that leave be, and it is hereby given appellants to file instanter in these consolidated appeal proceedings, said transcript of record; and

It is further ordered that said transcript of record so filed shall be considered upon these consolidated appeals as though transcripts similar thereto duly prepared and certified had been filed in each of said appeal proceedings herein.

[fol. 84] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 4781 and 4782, Consolidated

[Title omitted]

NOTICE—Filed May 23, 1932

To A. L. Schapiro, solicitor for American Bond and Mortgage Company, 33 South Clark Street, Chicago, Illinois:

Please take notice that we will, on the 24th day of May, 1932, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, appear before the said Circuit Court of Appeals in the court room usually occupied by

[fols. 85-91] said Court in the Federal Building, corner Clark and Adams Streets, Chicago, and we will then and there present the written motion of Appellants a copy of which motion is handed you herewith; at which time and place you may appear if you see fit.

Moses, Kennedy, Stein & Bachrach, Solicitors for Appellants.

Received a copy of the above notice and of the Motion therein referred to, this 23rd day of May, 1932.

A. L. Schapiro, Solicitor for American Bond & Mortgage Company, Appellee.

[File endorsement omitted.]

In United States Circuit Court of Appeals for the Seventh Circuit

Nos. 4781 and 4782, Consolidated

[Title omitted]

Motion to Set for Hearing—Filed May 23, 1932

Now comes appellants herein by their Solicitors and move this court to set these appeals for hearing on a day certain on the present trial call.

Moses, Kennedy, Stein & Bachrach, Solicitors for Appellants.

[File endorsement omitted.]

[fol. 92] In United States Circuit Court of Appeals for the Seventh Circuit, October Term and Session, 1932

Nos. 4781-4782

In the Matter of The American Bond & Mortgage Company, Alleged Bankrupt

Royal Indemnity Company, a New York Corporation; Parkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin, and Newell Becker, Appellants,

vs.

American Bond & Mortgage Company, Appellee

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

Before Alschuler and Sparks, Circuit Judges, and Lindley, District Judge

Opinion—Filed November 21, 1932

Lindley, District Judge:

The appellants, creditors of appellee, a voluntary bankrupt, appeal from two orders, one interlocutory and one final, each denying their petition to set aside an adjudication in bankruptcy, entered upon the voluntary petition of appellee, a Maine corporation. Two errors are claimed; first, that the jurisdictional averment that appellee had had its [fol. 93] principal place of business within the jurisdiction of the court for the greater portion of six months next preceding the filing of the petition should have been found by the court to be false and therefore fatal to the jurisdiction of the court; and, second, that the court should have found that the appellee was, as a Maine corporation, improperly in court for the reason that there was no showing that the stockholders had authorized the filing of the petition, as required by the Maine statute.

The petition of the creditors to vacate the adjudication upon the ground that the filing of the voluntary petition was not authorized by vote of the stockholders as required by the statute of the state of Maine, under which bankrupt is incorporated, was rightfully denied. The bankruptcy act provides that any person or corporation (with certain exceptions not here material) shall be entitled to the benefit of the Act as a voluntary bankruptcy. (Bankruptcy Act 4-A). The adjudication upon a voluntary petition is ex parte, and creditors are given no right to contest it. They are strangers at the bar and have no voice in the hearing, for the bankruptcy law permits no defense in limine to a voluntary petition. No defense is permitted by any party unless it be by stockholders contesting the asserted power of the directors. See In re Guanacevi Tunnel Co., 201 Fed. 316 (C. C. A. 2nd); In re E. T. Russell Co., 291 Fed. 809 at 818; In re United Grocery Co, 239 Fed. 1016 at 1018; In re Hargadine-McKittrick Dry Goods Co., 239 Fed. 155 at 158.

A different question arises, however, as to the right of the creditors to attack the jurisdiction of the court upon the ground that the voluntary petitioner has not had its principal place of business within the district for the greater portion of six months next preceding the filing of the petition. The existence of such fact is a necessary condition precedent to the attachment of jurisdiction of the court. Other courts quite generally have recognized the distinction between questions raised by creditors affecting the jurisdiction of the court and defenses in limine such as that above considered. Whether the correct rule be that the creditor has a right to be heard upon questions of jurisdiction, we shall not at this time attempt to decide. Certain it is that it is the duty of the court on its own motion and even over protests of the parties to take notice of lack of jurisdiction to enter an order. The bankruptcy act creates in the court jurisdiction in voluntary cases provided certain indispensable facts exist, and if there comes to its attention evidence that those facts, essential to [fol. 94] its jurisdiction, do not exist, then it is its duty so to find and to oust the proceedings. It must deny jurisdiction where the facts do not exist to warrant it. The law so provides; the mandate of Congress controls. Consequently without regard to the rights of creditors to bring jurisdictional defects to the notice of the court, which is recognized in certain cases such as: In re Hargadine-McKittrick Dry

Goods Co., 239 Fed. 155; In re Guanacevi Tunnel Co., 201 Fed. 316; Finn v. Carolina Portland Cement Co. et al., 232 Fed. 815 (C. C. A. 5th); In re San Antonio Land & Irrigation Co., 228 Fed. 984 at 986; In re Vassar Foundry Co., 293 Fed. 248; In re Garneau, 127 Fed. 677 (C. C. A. 7th), we have no doubt of the court's power and obligation, recognized by the same authorities and many others, to determine upon its own initiative whether or not under the act of Congress it has jurisdiction of the person of the petitioner.

The disposition of the main question, namely, whether or not the court had jurisdiction upon the ground that the corporation had its principal place of business in Chicago for the requisite statutory period depends upon the facts. More than three months prior to the filing of the petition in bankruptcy, appellee, a Maine corporation, then maintaining its principal place of business in Chicago, was made defendant in a suit in equity in the District Court in that city and entered its appearance and consented to the appointment of a receiver in equity, not on the ground that the company was insolvent, but that it was unable to meet its maturing obligations, and that it, necessarily, in order to conserve its property and assets, needed the protection of the court. The receiver appointed was authorized to continue the operation of the business of the corporation; to continue its existing agreements, arrangements and relations with other parties; to perform the corporation's existing contracts in so far as deemed desirable and to enter into and perform other contracts in the legal course of business of the corporation. The receiver thus appointed duly qualified and entered into and held possession and custody of all assets of the corporation, and so continued for a period of more than three months just preceding the filing of petition. It is contended, therefore, that in order to have had a principal place of business the petitioner must have been actually transacting business and that the appointment of the receiver and his subsequent actions removed the petitioner from the category of persons doing business so that petitioner had had no principal [fol. 95] place of business within the district or elsewhere for the greater portion of six months next preceding the filing of petition.

The District Court found and appellee insists that the receivership did not have for its purpose the cessation of

business of appellee; that it was intended to conserve the assets of the corporation, to continue the operation of its business and thus to continue the appellee within the category of one having its principal place of business within the district.

Appellee had its principal place of business within the jurisdiction of the District Court at the beginning of the six month period preceding the filing of the voluntary petition in bankruptcy. Within a little over two months after the beginning of said period, a receiver was appointed for appellee in the suit in equity as hereinbefore set forth. The purpose of that suit was not to dissolve the corporation and it could not result in a decree of dissolution. Rather the action was grounded, not upon any statutory provision for termination of the corporate powers, but upon those principles of equitable jurisprudence which permit courts of equity at the suit of creditors to take over, preserve and continue the business and assets of a going concern. All through the bill of complaint and the decree appointing a receiver appears the outstanding feature of the desirability, indeed the necessity, of continuation of the business.

The effect of such order and of the placing of the transaction of the corporate business in the representative of the court, was not to deprive appellee of the right to transact business except in so far as the specific provisions thereof so provided. All corporate powers not restrained remained in appellee; its corporate existence continued; its corporate identity was preserved, and it was still authorized by the author of its creation under its charter to discharge all corporate powers and franchises except such as were especially conferred upon the receiver.

The language of the Act is that the petitioner must have had its principal place of business within the district, not that it shall have continued to conduct its business exactly in the same manner and to exactly the same extent as previously during all the period. There is no requirement in the Act that any certain amount of business must be transacted, but that the place where the business of the corporation remaining in its hands, however great, however insignificant, is transacted shall be within the district. Obvi- [fol. 96] ously the element that congress had in mind in prescribing the terms, the conditions upon which jurisdiction might rest, was not the volume of business transacted

but the locus at which such corporate business should be transacted should be located. This is evident from the fact that the Act of 1867 used the words "carried on business" instead of "had the principal place of business." See Act of 1867 Section 11. Thus the framers of the previous Act had in mind the requirement of transacting business, and the framers of the present Act, by changing the wording, made evident their intent to require merely that the principal place of business should be a locus within the district.

We find the court in accord with our reasoning in this connection in the case of In re Guanacevi Tunnel Co., 201 Fed. 316 (C. C. A. 2nd), where it said that:

"It is not necessary that the company should have actually transacted much, or even any, business at 55 Liberty street during the period fixed by the act. The question is, Where was its principal place of business? Its business was small and irregular, and it may have transacted little or none, but if it had any principal place of business at all, it was there. The petitioning creditor has not satisfied us to the contrary."

So here the principal place of business of the corporation having been within Chicago and the adjudication having been entered upon the finding that such had been the fact for the greater portion of six months preceding the filing of the petition, the Court had jurisdiction unless there is evidence otherwise. No such proof appears unless it be by way of the facts regarding the receivership.

Inasmuch as the order appointing the receiver did not deprive the corporation of all corporate powers and franchises, it follows that such powers and franchises as it did retain were in operation at the place where its principal place of business had previously been. This corporate business, as Judge Lacombe said, may have been little or none, but if the corporation had any principal place of business at all it was in Chicago.

In the case of In re American & British Mfg. Corp., 300 Fed. 839, the facts were much stronger than in the recent case. Not only had the receivers been in possession during all the period of six months, but under the order of the [fol. 97] court they had converted the assets into cash, so

that no physical operation of any business was being had. Yet the court said:

"* * * the appointment of a receiver in no way affected or changed the principal place of business, once the receivership attached. The principal operations of the bankrupt were in Bridgeport, and while the place where it might file its petition might be optional with the bankrupt, in view of the fact that its domicile or residence may have been elsewhere, and it could have resorted to some other jurisdiction, it nevertheless seems quite clear to me that it had a right to select Connecticut, the scene of its principal operations, as the proper place to institute these proceedings, and I am not convinced that the appointment of receivers in equity changed the principal place of business, or that it lost such identification because its assets were converted into cash."

The case cited has been approved by the Circuit Court of Appeals, Ninth Circuit, Shortridge, et al., 20 Fed. (2d) 638-639. See also Struthers Furnace v. Grant, 30 Fed. (2d) 576, holding that the corporation retains its corporate powers except as limited by the court.

Appellants rely largely upon the language of the Supreme Court in United States v. Frederick W. Whitridge, etc. 231 U. S. 144. There the court held that a receiver in equity operating a railroad was not subject to the tax placed upon corporations for the transaction of corporate business; that the receivers acted as officers of the court and not of the corporations, but wholly without corporate power. We believe the reasoning of that court supports fully our conclusion here in that the receiver does not become the corporation and does not act as a corporate officer. In other words, the corporation still retains its identity and all corporate powers not expressly enjoined by the court.

Appellants rely also upon In re Perry Aldrich Co., 165 Fed. 249, where the court held under the facts there existing that no principal place of business existed within the district during the requisite period. But the court found as a fact there that the bankrupt had ceased to have any place of business in the State of Massachusetts for more than four months, not necessarily because of receivership but because it had sold all of its stock of jewelry, given up

its former place of business and had no other place, except one room occupied and used by another concern. If the [fol. 98] facts in that case were sufficient to show a continuation of the corporate franchise and all corporate powers except as eliminated by the court of equity, and if that court deemed such to be a definite cessation of maintaining a place of business, then we are not in accord with the conclusion.

The cases of In re Plotke, 104 Fed. 964; In re Garneau, 127 Fed. 677; In re Marron Mfg. Co., 1 Fed. (2d) 903, disclose no announcement by this court in conflict with our present decision. The questions of residence, domicile and location of principal place of business are questions of fact, and in each of those cases the evidence was such as to result in the conclusion that the court was without jurisdiction. In one of them, the bankrupt had physically removed his place of business entirely from the district. In another the bankrupt had attempted to defraud the court by claiming to be a resident of the district whereas he was in fact a resident of another district. In another, the bankrupt's corporate authority to do business in Illinois had been revoked and it had no authority to transact any business at any place.

Remembering that it is clear that the intent of the court in the equity proceedings was not to destroy the business of the corporation, that that court was powerless to destroy or dissolve the corporation, that that court attemped in no way to interfere with the corporate identity or its powers or franchises except in the specific manner provided in the decree, that all such corporate powers not enjoined remained in the corporation, and that there is shown no change of locality for the transaction of such reserved corporate powers, however great or however little they may have been, it follows that the district court was justified in refusing to find that the principal place of business was not within the district during the greater part of the requisite statutory period.

The interlocutory and final orders appealed from are affirmed at the costs of appellants.

[fol. 99] In United States Circuit Court of Appeals

4781

In the Matter of American Bond & Mortgage Company, a Maine Corporation, Alleged Bankrupt

Royal Indemnity Company, a New York Corporation; Parkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie De Friez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin, and Newell Becker, Appellants,

vs.

American Bond & Mortgage Company, Appellee

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Decree—Nov. 21, 1932

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed at the costs of the appellants.

[fol. 100] IN UNITED STATES CIRCUIT COURT OF APPEALS

4782

In the Matter of AMERICAN BOND & MORTGAGE COMPANY, a Maine Corporation, Alleged Bankrupt

ROYAL INDEMNITY COMPANY, a New York Corporation; Parkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie De Friez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin, and Newell Becker, Appellants,

vs.

AMERICAN BOND & MORTGAGE COMPANY

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

DECREE—Nov. 21, 1932

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed at the costs of the appellants.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 4781-4782

[Title omitted]

[fol. 101] NOTICE—Filed Dec. 8, 1932

To A. L. Schapiro, 33 S. Clark St., and Charles LeRoy Brown, 231 S. Clark St., attorneys for appellee:

Please take notice that we will on Thursday, December 8, 1932, at the opening of court in the forenoon, or as soon thereafter as counsel can be heard, appear before the United

States Circuit Court of Appeals, or one of the judges thereof in the event the court is not in session, and then and there ask for a stay of the mandate in the above entitled cause, as set forth in a petition for stay of mandate, copy of which is herewith served upon you; at which time and place you may appear if you see fit.

Julius Moses, Hamilton Moses, S. Sidney Stein, Walter Bachrach, Robert Bachrach, H. E. Soble, Herbert H. Kennedy, Saul S. Myers, and Selden Bacon, Solicitors for Appellants.

Received copy of the above and foregoing notice and petition for stay of mandate this 7th day of December, 1932.

A. S. Schapiro, Charles Le Roy Brown, Attorneys for Appellee.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

[fol. 102] PETITION FOR STAY OF MANDATE—Filed Dec. 8, 1932

To the Honorable the Judges of said Court:

Your petitioners, Royal Indemnity Company, a New York Corporation, Perkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, Appellants, by Julius Moses, Hamilton Moses, S. Sidney Stein, Walter Bachrach, Robert Bachrach, H. E. Soble, Herbert H. Kennedy, Saul S. Myers and Selden Bacon, their solicitors, state that they are the Royal Indemnity Company, a New York Corporation, Parkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, appellants in the above entitled cause; that

on November 21st, 1932, an order was entered by this court affirming the judgment of the District Court; that this cause having been finally determined in this Court, under Rule 28 of this Court, a mandate will issue to the court below, unless stayed by the further order of this Court; that your petitioners are planning to, and propose to file a petition in the Supreme Court of the United States within three months after the entry of the judgment of this Court in this cause, petitioning said Court to require by certiorari that this cause be certified to said Court for determination by it in accordance with Sections 1 and 7 of an Act of the Congress of February 13, 1925, entitled "An Act to amend the judicial code and to further define the jurisdiction of the Circuit Court of Appeals and of the Supreme Court and for other purposes."

Wherefore your petitioners pray that an order may be entered herein staying the issuance of a mandate of this Court in this matter until the further order of this court.

Julius Moses, Hamilton Moses, S. Sidney Stein, Walter Bachrach, Robert Bachrach, H. E. Soble, Herbert H. Kennedy, Saul S. Myers, Selden Bacon, Solicitors for Appellants.

[fol. 103] State of Illinois,
County of Cook, ss:

Julius Moses, being first duly sworn, on oath deposes and says that he is an attorney at law duly authorized to practice before this Court, and one of the attorneys of record representing the appellants in the above entitled cause, petitioners herein; that he has been directed to prepare and file in the Supreme Court of the United States a petition for a writ of certiorari on behalf of said appellants in said above entitled cause, and that he has at present a bona fide intention of preparing and filing in the Supreme Court of the United States a petition for a writ of certiorari on behalf of said appellants, petitioners herein.

Further affiant sayeth not.

Julius Moses.

Subscribed and sworn to before me this 7th day of December, A. D. 1932. M. S. Carne, Notary Public of Cook County, Illinois. (Seal.)

[File endorsement omitted.]

[fol. 104] In United States Circuit Court of Appeals

4781-4782

[Title omitted]

Order Staying Mandates—Dec. 8, 1932

Now this day come the parties by their counsel, and counsel for appellants now waive their right to file petitions for rehearing and present a motion for the stay of mandates pending petitions to the Supreme Court for writs of certiorari, and the court having heard the oral arguments of Mr. Robert Bachrach, counsel for appellants, in support of said motion, and of Mr. Charles LeRoy Brown, Counsel for appellee, in opposition thereto, it is ordered by the court that the mandates in these causes be, and the same are hereby stayed until the further order of this court.

It is further ordered that counsel for appellant proceed with diligence and promptly file their petitions for writs of certiorari in the Supreme Court of the United States, and upon the filing of said petitions file in this court proof of the filing of said petitions in said court.

On application of counsel for appellants it is further ordered that a typewritten certified transcript of the record of the proceedings in the District Court of the United States for the Northern District of Illinois, Eastern Division, in these causes, be certified and transmitted by the Clerk of this court to the Supreme Court of the United States for use in petitions for writs of certiorari.

[fol. 105] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 106] In Supreme Court of the United States

Stipulation re Printing of Record—Filed Jan. 3, 1933

In respect of the petition for writs of certiorari to review the decrees of the Circuit Court of Appeals for the Seventh

Circuit, entered on November 21, 1932, it is hereby stipulated as follows:

1. The entry of motion for the appointment of a receiver filed September 5, 1931 and September 10, 1931, are duplicates and only one need be printed.

[fol. 107] 2. The intervening petitions of William Lawrie, Katie DeFriez, J. L. Hone, Agnes E. Larkin, Jesse H. Owens, Parker D. Wendell, Lloyd S. Cheney, S. J. Bennett, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, Ralph W. Eldredge, Daniel Larkin and Newell Becker need not be printed for the reason that they are exactly the same as the intervening petition of Charles M. Winchester filed on the same day, to wit, February 15, 1932.

3. The following papers in the proceedings in the United States Circuit Court of Appeals for the Seventh Circuit need not be printed:

a. Notices of motion (in both causes) for leave to appeal filed May 6, 1932.

b. Motions (in both causes) for leave to appeal filed May 6, 1932.

c. Petitions (in both causes) for leave to appeal filed May 6, 1932.

d. Orders (in both causes) for appearance of counsel filed May 6, 1932.

e. Orders (in both causes) dispensing with printing of record filed May 21, 1932.

f. Orders (in both causes) granting leave to withdraw transcript filed May 21, 1932.

g. Orders (in both causes) extending time for filing briefs for appellee.

h. Orders (in both causes) granting leave to withdraw original transcript and extending time for filing briefs for appellee filed July 12, 1932.

i. Stipulations and orders (in both causes) for the extension of time for filing appellants' reply brief, filed Au-
[fol. 108] gust 10, 1932.

j. Orders (in both causes) setting cause for hearing filed October 4, 1932.

k. Orders (in both causes) for appearance entered October 25, 1932.

l. Minute entry (in both causes) of argument and submission entered October 25, 1932.

Julius Moses, Hamilton Moses, S. Sidney Stein, Walter Bachrach, Robert Bachrach, H. E. Soble & Herbert Kennedy, Attorney- for Petitioners. A. L. Shapiro, Charles LeRoy Brown, Attorneys for Respondent.

Dated, December 25, 1932.

[fol. 109] [File endorsement omitted.]

Endorsed on cover: File Nos. 37,282, 37,283. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 585. Royal Indemnity Company, Parkes D. Wendell, Charles T. Trigg, et al., petitioners, vs. American Bond & Mortgage Company. Term No. 586. Royal Indemnity Company, Parkes D. Wendell, Charles T. Trigg, et al., petitioners, vs. American Bond & Mortgage Company. Petition for writs of certiorari and exhibit thereto. Filed December 31, 1932. File Nos. 37,292, 37,283.

SUPREME COURT OF THE UNITED STATES

No. 585, October Term, 1932

ORDER ALLOWING CERTIORARI—Filed February 20, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

No. 586, October Term, 1932

ORDER ALLOWING CERTIORARI—Filed February 20, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

DEC 31

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

Nos. 585 and 586

IN THE MATTER OF THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, ALLEGED BANKRUPT.

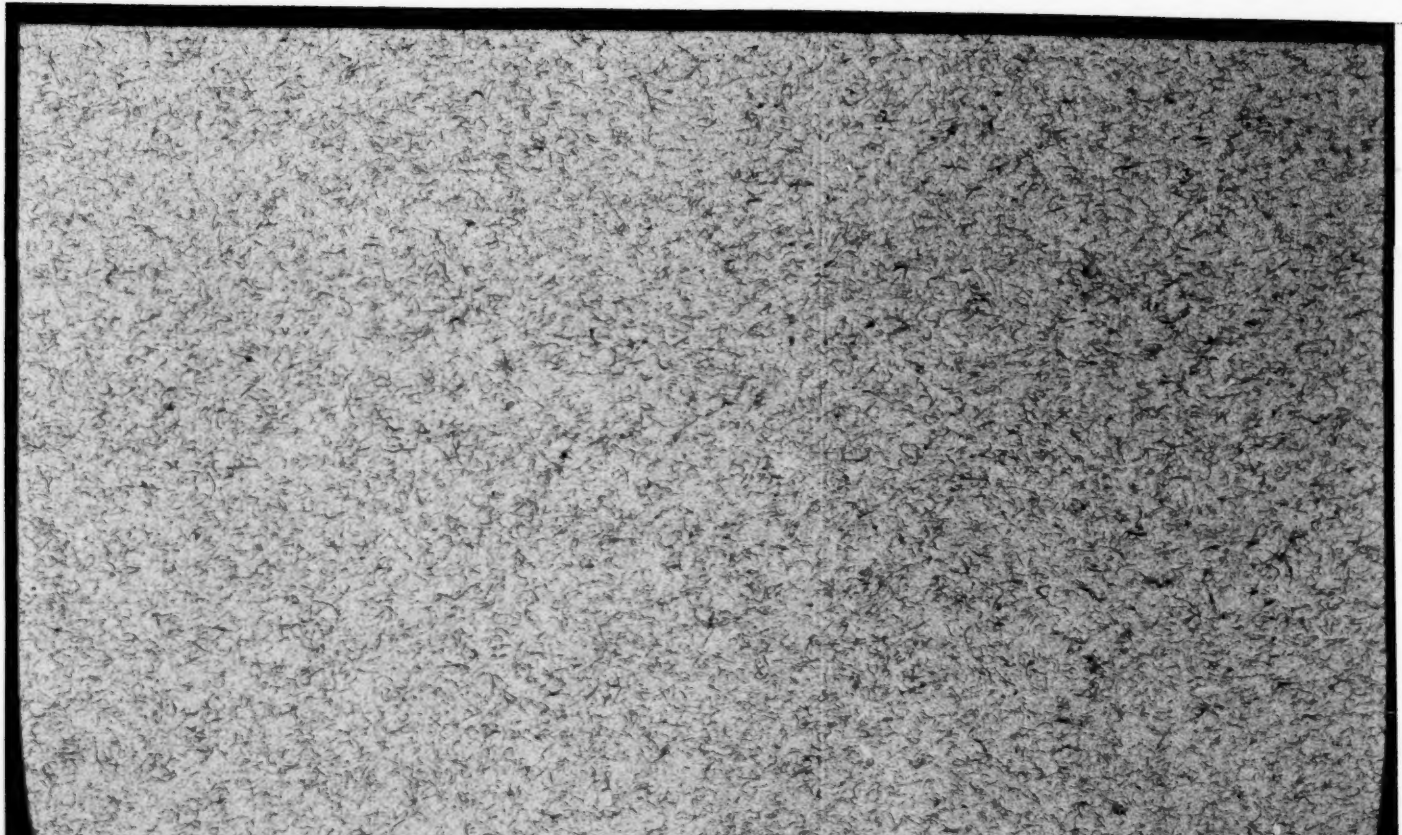
ROYAL INDEMNITY COMPANY, A NEW YORK CORPORATION, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DeFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN AND NEWELL BECKER, PETITIONERS (APPELLANTS BELOW),

against

THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, RESPONDENT (APPELLEE BELOW).

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

SELDEN BACON,
SAUL S. MYERS,
Counsel for Petitioners.



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

Nos. 585 and 586

IN THE MATTER OF THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, ALLEGED BANKRUPT.

ROYAL INDEMNITY COMPANY, A NEW YORK CORPORATION, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN AND NEWELL BECKER, PETITIONERS (APPELLANTS BELOW),

against

THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, RESPONDENT (APPELLEE BELOW).

PETITION FOR CERTIORARI.

To Hon. Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Royal Indemnity Company, Parkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newen Becker, creditors of the American Bond & Mortgage Company above named, respectfully pray that writs of certiorari issue to review the decrees of the Circuit Court of Appeals for the Seventh Circuit, entered in the above case on the 21st day of November, 1932.

Opinions Below.

The opinions of the District Court and of the Circuit Court of Appeals have not been reported as yet, but will be found in the record (R. 258 and 283).

Jurisdiction.

The decrees of the Circuit Court of Appeals were entered November 21, 1932. The jurisdiction of this Court is invoked under Section 240-A of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented.

The questions presented are as follows:

1. Section 63 of Chapter 56 of the Revised Statutes of Maine (1930) reads as follows:

> "No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, *except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation.*"

The first question is whether, in view of that statute, a vote of the directors of this Maine corporation was sufficient in law to authorize the filing of a voluntary petition in bankruptcy in Illinois, where the corporation claims to have had its principal place of business for the greater portion of the six months next immediately preceding the filing of such voluntary petition in bankruptcy. Neither the District Court nor the Circuit Court of Appeals attempted to deny that such was the force of that act.

2. Both the District Court and the Circuit Court of Appeals held that creditors of the Maine corporation (who had themselves filed a petition for the involuntary bankruptcy of the corporation at the domicile of the corporation in Maine more than three months prior to the filing of the voluntary petition in

Illinois, and who had secured an adjudication in that involuntary proceeding in Maine) are not entitled to be heard to object to that voluntary petition on the ground that the directors of the corporation had, under that statute, no power to authorize such voluntary petition in bankruptcy.

The question is squarely presented of the correctness of that ruling.

3. Whether the principal place of business of a Maine corporation can still be said to remain in the Northern District of Illinois, within the meaning of the Bankruptcy Act, after (1) omnibus receivers have been appointed of all its property and assets, including its offices, records and books, in the Northern District of Illinois, (2) the receivers have gone into complete possession, (3) the corporation and its officers and directors have been enjoined, by the court appointing the receivers, from interfering in any way with its assets and property, (4) the corporation being concededly insolvent, and (5) the court in the equity suit having found that it was necessary for the protection and preservation of the rights of its creditors that the assets, property and business be preserved and administered as an entirety through receivers.

The equity receivers had been in full and undisturbed possession for the greater part of the six months next preceding the filing of the voluntary petition.

Statement.

The facts which are admitted on the face of the record may be summarized as follows:

On May 21, 1931, an omnibus bill in equity, by simple contract creditors, was filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, against the American Bond & Mortgage Company (R. 35). The bill alleged that the American Bond & Mortgage Company was indebted to general creditors in a sum in excess of $8,000,000, part of which was overdue (R. 37). The bill further alleged that if the property and assets of the American Bond & Mortgage Company were sold or disposed of at forced sale, they might prove insufficient to provide for payment of the indebtedness in full (R. 39). The bill further alleged that unless the Equity Court, in view of the inability of the defendant to meet its maturing obligations, would deal with the property of the defendant as a trust fund, for the payment of its creditors as their several interests should appear, there would be great and irreparable damage to the creditors and to the defendant itself (R. 40).

The bill prayed that the Equity Court "administer" all and singular the property, rights and assets of the defendant, and, in order to preserve and protect the property and assets, and in order that they might be held together and ultimately sold or otherwise disposed of in the most advantageous manner, that the court appoint receivers of all the property of the American Bond & Mortgage Company, with full power and authority to take into their possession and hold such property and assets (R. 40, 41). The bill further prayed that the receivers continue to manage and operate as a whole the business then being conducted by the defendant, etc., etc. (R. 41, 42). The bill also

prayed for an injunction restraining the American Bond & Mortgage Company, and the owners, superintendents, managers, attorneys, agents and employees of that company from interfering with any of its properties, and "that at such time or times as may be found just and proper the properties and assets of the defendant may be ordered to be sold, in whole or in part, in such manner and upon such terms and conditions as this Honorable Court shall deem just and equitable, * * * and that the proceeds of any such sale be distributed among those entitled thereto as this Honorable Court shall adjudicate" (R. 44).

On the 22nd day of May, 1931, the defendant answered, expressly admitting all the allegations of the Bill and consenting to the relief prayed for therein. The cause was brought on to be heard on that day on Bill and Answer only, and the Court found "that it is necessary for the protection and preservation of the respective rights and equities of the complainants and of all other creditors of the defendant that the assets, property and business of the defendant be preserved and administered as an entirety through a Receiver to be appointed herein" (R. 48). The Court appointed the Chicago Title & Trust Company receiver (R. 48), and later on the same day, Arthur W. Draper, as co-receiver, of all the property of the American Bond & Mortgage Company (R. 52).

No process upon the Bill in Equity was issued to the defendant out of the District Court of the United States for the Northern District of Illinois, Eastern Division, or served upon it, and it appeared and so answered the bill voluntarily (R. 137, 239).

By the order appointing the receivers, they were authorized and empowered to continue the operation of the business of the defendant, with the usual powers of receivers in like cases, until the further order of the Court (R. 49, 52), and the defendant, its officers, superintendents, managers, agents and employees were enjoined from interfering with the transferring, selling or disposing of any property or assets or income of the defendant and from attempting to sell or in any manner dispose of any part of the property or assets of the defendant (R. 51).

The receivers immediately qualified and took possession of all the property of the American Bond & Mortgage Company in the Northern District of Illinois, including its offices and its books, records, files and papers (R. 239).

On the 25th day of May, 1931, your petitioners, as creditors of the American Bond & Mortgage Company, having claims amounting to many thousands of dollars in excess of all security held by them, filed a petition for the involuntary bankruptcy of the said American Bond & Mortgage Company in the District Court of the United States for the District of Maine, Southern Division (R. 57, 242). That was the district in which the said American Bond & Mortgage Company was and had been at all times for more than three years resident (R. 238). The petition alleged among other acts of bankruptcy, the appointment of the said receivers with the consent and procurement of the said American Bond & Mortgage Company (R. 84).

The American Bond & Mortgage Company filed an answer in the Maine bankruptcy proceeding, denying

its insolvency (R. 130). It withdrew that answer on September 3, 1931 (R. 131), and it was thereupon and on October 15, 1931, duly adjudged a bankrupt in Maine (R. 9) and the proceeding there was referred to the Referee in Bankruptcy.

Subsequent to the hearing in Illinois on the motion to dismiss the voluntary bankruptcy proceeding in Illinois hereinafter referred to, the first meeting of creditors was called by the Referee in Maine, and the first meeting held, but was adjourned to enable the Maine District Court to hear petitions for the transfer of the Maine bankruptcy proceeding to Illinois (58 F. (2d) 379).

Those petitions had been set down for hearing only after the District Court of the United States for the District of Maine, Southern Division, had entered the order of adjudication and had referred the proceeding to the Referee in Bankruptcy and the Referee had called a first meeting of creditors (58 F. (2d) 379).

In fact, the final petitions of the so-called "Debenture Committee" and the bankrupt for transfer were only filed after the expiration of the time within which creditors could file their proofs of debt in Maine and had actually filed such proofs of debt. And that so-called committee had itself filed a proof of debt with the Referee in Bankruptcy in Maine.

As one ground of objection to that motion it was urged that there was no valid pending bankruptcy proceeding in the Illinois District. The District Judge in Maine overruled all objections and directed transfer

of the entire proceeding to the Illinois District. On the questions here involved he said:

> "The same points made here were urged before Judge Barnes, noted in his opinion and decided. While not concluded by his action, I should certainly regard it as very persuasive and believe that, in the interest of orderly procedure and speedy ending of litigation, I should not decline to follow it unless I concluded that it was clearly wrong. At least, it is a precedent which I feel justified in following, and I do so."
>
> *In re American Bond & Mortgage Co.*, 58 F. (2d) 379.

The Circuit Court of Appeals for the First Circuit allowed an appeal from that order, which appeal is now pending in that Court awaiting argument. No meeting of creditors has ever been called in Illinois (R. 4).

On the 5th day of September, 1931, and more than three months after the said Equity Receivers had taken full and complete possession of all the assets and property of the said American Bond & Mortgage Company in the Northern District of Illinois (including the offices that had been occupied by it prior to said receivership, its books, files, records and papers), the Board of Directors of the said American Bond & Mortgage Company, on their own sole authority, and without any meeting or resolution of the stockholders of the American Bond & Mortgage Company authorizing such a step, caused to be filed in the said District Court of the United States for the Northern District of Illi-

nois, Eastern Division, a paper purporting to be a voluntary petition in bankruptcy of the American Bond & Mortgage Company. It appeared on the face of that petition that it had been filed by the sole authority of the Board of Directors of the American Bond & Mortgage Company (R. 1-3).

The said District Court of the United States for the Northern District of Illinois, Eastern Division, thereupon, without any prior notice to your petitioners, who were the petitioners in the said prior involuntary bankruptcy proceeding in the District of Maine, then pending, forthwith entered an adjudication of bankruptcy against the said American Bond & Mortgage Company on such alleged voluntary petition (R. 3, 17).

At the time of the adjudication in Illinois the Court had before it evidence in the equity suit of the prior filing of the petition in bankruptcy in Maine, but no notice was given to the creditors who had filed the petition in Maine (R. 193).

Thereupon, on the 10th day of September, 1931, your petitioner, the Royal Indemnity Company, applied for leave to file a petition to vacate the said adjudication on said pretended voluntary petition and to dismiss that petition as without jurisdiction on various grounds (R. 5). These grounds included (1) the claim that the American Bond & Mortgage Company had not had its principal place of business in the Northern District of Illinois during the greater part of the six months next preceding the filing of the alleged voluntary petition, owing to the appointment of said receivers of all its Illinois property and offices, more

than three months prior to the filing of the said involuntary petition (R. 13, 14, 15); (2) that the American Bond & Mortgage Company was organized and created under and by virtue of the laws of the State of Maine, by which laws only the stockholders in meeting assembled had authority to authorize the filing of a voluntary petition in bankruptcy, and no such meeting had been held or resolution passed by the stockholders authorizing such voluntary petition in bankruptcy (R. 15).

Leave was given to the Royal Indemnity Company (R. 7) to file such a petition by order of November 11, 1931, and thereafter, your other petitioners, on leave duly granted, joined in the petition of the Royal Indemnity Company to vacate and set aside the adjudication of the said voluntary petition and to dismiss the same (R. 248, 249).

Those petitions were subsequently answered by the American Bond & Mortgage Company, and the appointment of the receivers and their immediate qualifications, and taking possession of all the property in the Northern District of Illinois was expressly admitted (R. 239), as well as the facts that the American Bond & Mortgage Company was a Maine corporation and that the filing of the voluntary petition had not been authorized by any meeting of the stockholders of the American Bond & Mortgage Company, and that no such meeting of its stockholders had been held (R. 238, 239).

The Decisions of the Courts Below.

By permission of the Court the two questions of law involved as to whether, in view of the receivership, the

American Bond & Mortgage Company could be said to have had its principal place of business in the Northern District of Illinois, after the property had been taken possession of by the receivers, and the question whether the Court had the right to proceed to adjudication on a voluntary petition filed by no other authority than that of the Board of Directors, were taken up as matters of law. On those questions the District Court ruled: (a) *as to the effect of the receivership:*

> "An examination of the bill of complaint in the equity receivership case, the answer thereto, and the order appointing the receiver, leads the court to the conclusion that it was the intent of the parties to that proceeding and of the court that the business of American Bond and Mortgage Company was not to be destroyed, but, on the contrary, was to be conserved and preserved. Since this was the purpose of the parties and of the court in that proceeding, the court holds that American Bond and Mortgage Company did not, because of the appointment of an equity receiver on May 22, 1931, cease to do business on that day and, accordingly, did not, on that date, cease to have a place of business in the Northern District of Illinois."

and, (b) *as to the authority of the directors* of the American Bond & Mortgage Company to file a voluntary petition in bankruptcy without authority from the stockholders in meeting assembled, the District Court held:

> "It may be that the laws of Maine require the authorization of the stockholders in meeting as-

> sembled before a voluntary bankruptcy proceeding may be instituted by a Maine corporation, but if the board of directors of a Maine corporation authorize the filing of a voluntary bankruptcy proceeding, and such proceeding is filed in a court which otherwise has jurisdiction, it is exceedingly difficult to see what concern it is of a creditor whether that proceeding has been formally authorized by stockholders. As the court views the situation, a creditor is not at all concerned with this question, and this view has support in the authorities. *In Re Ann Arbor Mach. Corp.*, 274 Fed. 24; *In Re Wagy & Co.*, 22 Fed. (2d) 9. The court holds that this question cannot be raised by a creditor."

From the decrees entered upon that ruling, your petitioners appealed to the Circuit Court of Appeals for the Seventh Circuit, which, on November 21, 1932, filed its opinion affirming the said decision of the District Court saying:

> "The adjudication upon a voluntary petition is *ex parte*, and creditors are given no right to contest it. They are strangers at the bar and have no voice in the hearing, for the bankruptcy law permits no defense *in limine* to a voluntary petition. No defense is permitted by any party unless it be by stockholders contesting the asserted power of the directors."

On the point of the doing of business within the District, the Circuit Court of Appeals concluded by saying:

> "Remembering that it is clear that the intent of the court in the equity proceedings was not to destroy the business of the corporation,

> that that court was powerless to destroy or dissolve the corporation, that that court attempted in no way to interfere with the corporate identity or its powers or franchises except in the specific manner provided in the decree, that all such corporate powers not enjoined remained in the corporation, and that there is shown no change of locality for the transaction of such reserved corporate powers, however great or however little they may have been, it follows that the district court was justified in refusing to find that the principal place of business was not within the district during the greater part of the requisite statutory period."

The above are the rulings which it is now sought to review.

To avoid possible misapprehension of certain other facts which appear in the record, it may be mentioned (though those matters in no way entered into the decisions below), that at the same moment the Bill of Equity was filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, there was also filed there an involuntary petition in bankruptcy against the American Bond & Mortgage Company and a petition for the appointment of a bankruptcy receiver in that proceeding (R. 14, 35, 136). These papers were on their face markedly defective and were, as was admitted in open court, filed to be "cooperative with" the Bill in Equity (R. 136, 139, 140, 141, 162). Answers to that petition were promptly filed in June, 1931, both by the bankrupt and by other creditors (R. 139, 206). No hearing was ever had on the petition for a bankruptcy receiver (R. 4, 6, 7, 8, 139).

And the issues presented by the answers have never been brought to trial (R. 139). Save for a refusal to dismiss that petition on motion, absolutely no subsequent step has ever been taken in that proceeding (R. 139).

The action of the District Court of the United States for the Northern District of Illinois, Eastern Division, on the equity side in subsequently appointing equity receivers and proceeding to administer the estate in equity seems to bring that dormant Illinois involuntary proceeding directly within the decision of this Court in *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, even aside from its collusive character, discussed with marked ability before this Court by the present Attorney General and Mr. William C. Bullitt, in the case of *United States* v. *Butterworth Corp.*, 269 U. S. 504, at pages 505-6.

This Court will, perhaps, observe that the answer of the American Bond & Mortgage Company to the petition to vacate contains no suggestion that the Equity Receivers or the District Court of the United States for the Northern District of Illinois, Eastern Division, have ever taken any steps to assert rights of the corporation against its former officers and controlling stockholders (R. 235). Over 200 creditors have expressed their particular desire that administration of the estate be conducted under the control of the District Court of the United States for the District of Maine, Southern Division, where adjudication has long ago been had (R. 9) and the first meeting of creditors held and adjourned by the court without their electing a

trustee. If there was no valid pending petition in Illinois, the administration must be in Maine.

The petitioners in the Illinois involuntary bankruptcy proceeding made no objection or any claim that the estate of the American Bond & Mortgage Company was already in *custodia legis* by virtue of the filing of the said involuntary petition in bankruptcy in Illinois; and they did not otherwise object to the creation of such equity receivership (R. 137).

Specification of Errors to be Urged.

The Circuit Court of Appeals erred

1. In holding that creditors of the American Bond & Mortgage Company, although the petitioning creditors in the bankruptcy proceeding already pending in the District Court of the United States for the District of Maine, Southern Division, had no right to contest the adjudication of bankruptcy upon the alleged voluntary petition, on the ground that the said petition had not been authorized by the corporation in accordance with the laws of Maine under which it was created and existed.

2. In holding that the principal place of business of the American Bond & Mortgage Company continued to be in Illinois after the appointment of the Equity Receivers and their taking possession of the property and assets of the corporation.

3. In affirming the decision of the District Court of the United States for the Northern District of Illinois, Eastern Division, upon the petition to vacate the adjudication of bankruptcy on the voluntary petition.

Reasons for Granting the Writs.

The questions involved in this matter are questions of jurisdiction which have given rise to conflicting decisions in different circuits. These questions are important in jurisprudence, general in their application, and have been differently answered by various Federal courts and by the courts of various states.

Point I.

The Board of Directors had no power to authorize a voluntary petition in bankruptcy by the American Bond and Mortgage Company, and a petition filed solely by their authority is not the voluntary petition of the Corporation.

There was for a time an apparent sharp divergence between the decisions of different Courts of Bankruptcy as to the power of a Board of Directors of a corporation to authorize the filing of a voluntary petition in bankruptcy. It was soon observed, however, that the decisions in favor of such powers were as to corporations organized under the laws of States which did not expressly confine such powers to the stockholders. Where the corporate laws of a State provided that such power could be exercised only by the stockholders, it was held that action by the Board of Directors conferred no jurisdiction.

Some half dozen or more States have, or have had, such statutes, and where the statutes have been so construed the rulings have been uniform that only the

stockholders could authorize voluntary petitions in bankruptcy.

In re *Standard Shipyard Co.*, 262 Fed. 522 (D. C. Me.).

In re *Quartz Gold Mining Company*, 157 Fed. 243 (D. C. Ore.).

Van Emon v. *Veal*, 158 Fed. 1022 (C. C. A. 9th Cir.).

In re *Burbank Co.*, 168 Fed. 719 (D. C. N. H.).

In re *Crystal Ice Co.*, 283 Fed. 1007 (D. C. Mont.).

In re *Security, etc. Assn.*, 52 F. (2d) 961 (D. C. Nev.).

In re *Bates Machine Co.*, 91 Fed. 625 (D. C. Mass.).

It is now settled law that the question whether the Board of Directors of a corporation has the power to authorize the filing of a voluntary petition in bankruptcy is to be determined exclusively by the law of the State organizing the corporation. It determines by its own laws where the various corporate powers of its creature reside and what persons shall exercise them.

Home Powder Co. v. *Geis*, 204 Fed. 568.

In re *Russell Wheel Co.*, 222 Fed. 569, 573.

In re *Vassar Foundry Co.*, 293 Fed. 248.

In re *Standard Shipyard Co.*, 262 Fed. 522, 526.

Loveland on Bankruptcy (4th Ed.), Sec. 136.

Black on Bankruptcy (4th Edn.) p. 310.

Under the laws of Maine, even before the present prohibitory statute, the Board of Directors of a cor-

poration had no power to transfer its fundamental assets, but only to carry on its business.

Rollins v. *Clay*, 33 Me. 132.

The Maine corporation law was largely revised in 1891 and by that Act it was specifically provided:

> "No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation."
>
> Rev. Stat. Me. Cap. 56, Sec. 63.
> (For full text of section, see Appendix A.)

And this Maine statute was construed years ago by the District Court of the United States for the District of Maine as depriving the Directors of any power of filing a voluntary petition in bankruptcy on behalf of the corporation.

> In re *Standard Shipyard Company*, 262 Fed. 522, 526.

That such is the law of Maine has not been disputed either by the District Court or by the Circuit Court of Appeals in this case.

The question is the simple one whether, pursuant to Section 4 of the Bankruptcy Act, the American Bond & Mortgage Company has, in fact and in law,

filed "a petition to be adjudged a voluntary bankrupt." If unauthorized persons had filed such a petition in its name and ostensibly on its behalf, then such petition was not the act and petition of the corporation itself; the corporation had never declared its willingness and purpose to be "a voluntary bankrupt"; the conditions of Section 4 of the Bankruptcy Act had not been fulfilled; and the court was without jurisdiction.

POINT II.

The petitioning creditors were entitled to raise the objection.

Since the Maine law is clear that such power did not reside in the Board of Directors, it would seem that, totally irrespective of the capacity of the petitioners, the court of its own motion should have vacated the adjudication and dismissed the voluntary petition as unauthorized and as conferring no jurisdiction. But the courts below in this case have avoided this result, by holding that such action by the Board was not void, but only voidable, and that the invalidity could be taken advantage of solely by stockholders who alone could avoid the effect of the act of the Board.

The courts below have in this case held that even though the objection that the petition was not the act of the corporation ran to the jurisdiction of the Bankruptcy Court, these creditors (petitioners in the earlier petition in the Maine district) could not be heard to object, and the Court would not itself take the objection.

Decisions in the First and Second Circuits and in many State Courts have been the other way.

In the very recent case of *Commerce Trust Company* v. *Chandler*, 295 Fed. 241, the Circuit Court of Appeals for the First Circuit held that, under the provisions of the corresponding Massachusetts Act (see Appendix B) the objection could be raised not only by the stockholders but by anyone else in interest.

In discussing this Massachusetts statute, the First Circuit Court of Appeals said:

> "In the statute before us the Legislature was dealing with vital matters relating to the conduct and the life of corporations. We think it intended to prohibit a corporation, by its directors, or by less than two-thirds of its stock, at a lawful meeting, to change its corporate name, or the nature of its business, or the classes of its capital stock and their voting power, or to make any other lawful amendment or alteration in its agreement of association or articles of organization, or to sell, lease, or exchange all its property and assets, including its good will and its corporate franchise. We think the Legislature intended to place these fundamental changes in a corporation beyond the powers of directors and beyond the powers of stockholders representing less than two-thirds of its stock. The Legislature did not undertake to limit the protective powers of the statute, nor to say for whose protection it was made. We think it was clearly made for the benefit of stockholders; but we think it was not for their exclusive benefit. We think the Legislature intended to say that any person whose property rights were invaded by a noncompliance with the terms of this stat-

ute could assert the invalidity of any act attempted to be done without such compliance."
Commerce Trust Company v. *Chandler*, 295 Fed. 241, 243-244.

Under similar New York statutes forbidding the execution of corporate mortgages without the consent of the stockholders, it is held by the Second Circuit Court of Appeals, as well as by the New York Court of Appeals, that the objection can be raised by anyone.

In re Post & Davis Co., 219 Fed. 171.

In re James, Inc., 30 F. (2d) 555.

Leffert v. *Jackman*, 227 N. Y. 310.

Maryland Company v. *Schaefer Co.*, 141 Misc. 629, affd. without opinion 232 A. D. 766 and 256 N. Y. 663.

On the other hand, the Circuit Court of Appeals for the Seventh Circuit had previously held that, under the Illinois Railroad Law (for the details of which see Appendix C), the statutory requirement of consent of two-thirds of the stockholders, is for the protection of the stockholders only, and the stockholders alone may use it, following a decision of the Supreme Court of Illinois.

U. S. Mortgage & Trust Co. v. *Chicago & A. R. Co.*, 40 F. (2d) 386, 389.

In the Eighth Circuit Court of Appeals, there were dicta to like effect concerning the effect of the Colorado statute.

Westerlund v. *Black Bear Mining Co.*, 203 Fed. 599.

But as the suit there under consideration was brought by stockholders, the matter was merely dictum, and curiously enough, was, in part, predicated on District Court decisions in the Second Circuit long since overruled.

There is thus direct conflict between the Circuit Courts of Appeal in the First and Seventh Circuits as to this matter, with the First Circuit supported by rulings in the Second Circuit Court of Appeals and the Seventh Circuit supported by dicta in the Eighth Circuit Court of Appeals.

As Maine is within the First Circuit, some especial weight would seem to attach to the decision of the First Circuit Court of Appeals on the similar Massachusetts statute, and it is perhaps not unworthy of note that the Judge writing the opinion in the *Chandler* case in the First Circuit Court of Appeals (295 Fed. 241), from which we have quoted, is the same Judge who, sitting in the District Court of the United States for the District of Maine, had previously made the similiar ruling as to the force of the Maine statute in the *Standard Shipyard* case, 262 Fed. 522.

It seems peculiarly important that in case of such disagreement, where the Circuit Courts for the First and Second Circuits give the Eastern Statutes their full force and the court in the Seventh Circuit takes the other position, a decision overruling what has been accepted law in New England for almost a generation and recognized as such by the Federal Courts in New England, should emanate from this court, if at all, rather than from a Circuit Court of a Western Cir-

cuit, sitting in a State where a different conception of the corporation statutes obtains.

Moreover, the decision of the Supreme Court of Maine, in *Rollins* v. *Clay*, 33 Me. 132, that even prior to the statute the objection as to the limitation of the powers of directors could be taken by any person in interest, would seem to declare the policy of that State on the point, and, if so construed, that decision is controlling as to the construction to be placed on the Maine statute, though disregarded by the courts below.

Point III.

Upon the appointment and qualification of the equity receivers, and their taking possession of all of the property of the American Bond and Mortgage Company in the Northern District of Illinois, including its offices, books and papers, and the Corporation being itself enjoined from interfering with the property in any way, the Corporation ceased to have its principal place of business in the Northern District of Illinois.

Upon this point, too, there is seeming conflict between the decision below, on the one hand, and decisions in District Courts in other Circuits, and also rulings of this Court on the character of such receiverships.

In the following cases, receiverships of this character were squarely held to have put an end to foreign corporations having their principal place of business in the district of the receivership.

In re Perry Aldrich Co., 165 Fed. 249 (D. C. Mass.).

In re McNally Co., 208 Fed. 291 (D. C. S. D. N. Y.).

It had seemed to us that the Circuit Court of Appeals for the Seventh Circuit many years ago, in the case of *In re Plotke*, 104 Fed. 964, had strongly intimated that the conduct of business by an assignee in insolvency did not suffice to continue the principal place of business of the bankrupt as the place where the assignee resided when the bankrupt had removed from the State after the assignment. While the Circuit Court of Appeals in the present opinion has referred to that case as making no announcement in conflict with that former decision, it has failed to notice that feature of that case.

The industry of counsel has so far succeeded in disclosing but a single other case which is contrary to the ruling in the *Perry Aldrich* case and the *McNally Company* case. The case we refer to is *In re American & British Manufacturing Corporation* (300 Fed. 839), decided, in the District Court of the United States for the District of Connecticut, subsequent to the decisions in the *Perry Aldrich* case and the *McNally Company* case, which decisions were not even mentioned by the court in Connecticut.

In that Connecticut case, the question considered by the Court seems to have been rather one as to the character of the business than as to the locality of conducting it during the greater part of the six months next preceding the filing of the petition in bankruptcy. Both court and counsel in that case seem to have assumed that business done by the equity receiver was business done by the corporation. The decision of the case,

however, was in conflict with the direct rulings made in the *Aldrich* and *McNally* cases.

The cases cited by Judge Thomas in the *American & British* case to support his decision did not deal with the point here involved. On that subject of the applicability of the principal place of business clause to the conduct of business by general receivers, we have found no direct decisions except those mentioned.

Section 2(1) of the Bankruptcy Act does not refer to the principal place of *the business*, but to the place where "the persons bankrupt have *their*" principal place of business. In other words, the Bankruptcy Act refers to the place where *the bankrupt* is doing business, not to a place where a business it once owned is being done by someone else. (*In re McNally Co.*, 208 Fed. 291; *In re Perry Aldrich Co.*, 165 Fed. 249.)

The Bankruptcy Act does not create out of the business a sort of separate entity or existence, irrespective of the identity of the persons conducting the same. On the contrary, the thing emphasized by the statute is the identity of the person conducting the business. It is the place where the bankrupt himself has had *his* principal business.

When, therefore, the business passes out of his hands and it is taken over and conducted by others, he thereupon ceases to be in that business in that place, even though the business itself as such may go on. The relevant consideration is that the bankrupt himself has ceased to conduct the business and that, therefore, the locality has ceased to be the place where the bankrupt has *his* "principal place of business." Consequently, when the courts below undertook to decide

that the continuance of the business in the same locality is sufficient to give jurisdiction, they were improperly personifying the business and misreading the Bankruptcy Act.

The court below based its ruling in part also upon the assertion that "all such corporate powers not enjoined remained in the corporation, and that there is shown no change of locality for the transaction of such reserved corporate powers, however great or however little they may have been." But this clearly is not the meaning of the word "business" in Section 2(1) of the Bankruptcy Act. That word is obviously used in its common and usual meaning and refers to active and personal engagement in a commercial pursuit. The mere exercise of naked corporate powers, separate and apart from active management of the commercial enterprise which the corporation had in hand, is not the conduct of business within the meaning of that section.

We urge that certain decisions of this court clearly establish the true rule as to the nature and effect of such a receivership, from that adopted by the court below.

As to its nature, the decisions of this Court in *Price* v. *United States*, 269 U. S. 492, 502, and *United States* v. *Butterworth*, 269 U. S. 504, seem controlling.

As to the effect of such a receivership, we believe the decision in *United States* v. *Whitridge*, 231 U. S. 144, establishes that after this receivership *the corporation* no longer was doing business in the Northern District of Illinois.

The decision of the Sixth Circuit Court of Appeals in *Ohio* v. *Ferris,* 229 Fed. 892, seems to be to like effect.

The receivership in this case covered the greater part of the six months next preceding the filing of the voluntary petition. After the appointment of those receivers and their taking over possession of all the assets of the American Bond & Mortgage Company in the Northern District of Illinois, including its offices, its files and its records, it would seem that that corporation was "out of business" in the Northern District of Illinois.

While many authorities were cited below by opposing counsel as more or less remotely bearing on the question involved, we have not seen fit to trouble this Court with a discussion of those authorities in this petition. We believe the foregoing brief statement shows ample reason for granting the writs in the clear conflict between the Circuit Courts of Appeals for the First and Seventh Circuits.

On both questions there is radical divergence of decisions in different circuits, and the decision below is also believed to be in conflict with the decisions of this Court in the *Price, Butterworth* and *Whitridge* cases cited.

WHEREFORE your petitioners respectfully pray that writs of certiorari be issued out of and under the seal of this Court directed to the Circuit Court of Appeals for the Seventh Circuit commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, the full and complete transcripts of the records of all pro-

ceedings in the two cases, numbered and entitled on its docket, Nos. 4781 and 4782, in the matter of the American Bond & Mortgage Company, Incorporated, Bankrupt; and that the said decrees of the Circuit Court of Appeals for the Seventh Circuit may be reviewed and reversed by this Court, and that your petitioners may have such other and further relief in the premises as to this Court may seem meet and just. And your petitioners will ever pray, etc.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER,

Petitioners.

By SAUL S. MYERS.

SELDEN BACON,
of New York;
SAUL S. MYERS,
of New York;
Of Counsel.

APPENDIX A.

Rev. Stat. Me. Cap. 56, Sec. 63.

Corporation not to sell franchises or entire property without consent of stockholders. R. S., c. 51, s. 60., 1929, c. 242. No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation. All such sales, leases and consolidations shall be subject to the provisions of this and the eleven following sections, and to the prior lien of stockholders as therein defined. Except as to franchises, this and the eleven following sections shall not be held to apply to mortgages or corporate property.

To effect a consolidation under the provisions of the foregoing paragraph and subject to the provisions of this and the eleven following sections, any two or more corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state, or any corporation or corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state and any corporation or corporations organized under the laws of any other state, may consolidate into a single corporation which may be either one of said corporations, provided the same be a corporation originally organized under the laws of this state, or a new corporation under the laws of this state to be formed by means of such consolidation, by entering into an agreement duly authorized by a majority of the direc-

tors of the respective corporations and signed by the duly authorized officers, and under the respective seals of said corporations, prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, whether or not the consolidated corporation shall be one of the constituent corporations or a new corporation created by such consolidation, and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set out in the certificate of organization of corporations organized under this chapter and as are pertinent in the case of a consolidation, the manner of converting the capital stock of each of such consolidating corporations into the stock or obligations of such consolidated corporation together with such other provisions and details as shall be deemed necessary to perfect the consolidation. Said agreement shall be acknowledged by one of the executing officers of each of the consolidating corporations before an officer authorized by the laws of this state to take acknowledgments of deeds, to be the respective act, deed and agreement of each of said corporations.

Subject to provisions of by-laws with reference to closing stock-books prior to stockholders' meetings, said consolidation agreement shall be submitted to the stockholders of record of each corporation at a meeting thereof called separately for the purpose of taking the same into consideration, and at said meeting a vote in person or by proxy shall be taken for the adoption or rejection of said agreement, and if the votes of stockholders of each corporation representing a majority of the voting power, on a proposal to consolidate said corporation with another, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the clerk or secretary of each corporation and the agreement so signed, acknowledged, adopted and certified, after it has been

examined by the attorney-general, and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws of this state, shall be recorded in the registry of deeds in the county where the said consolidated corporation is located, and within sixty days after the day of the meeting at which said consolidation agreement is adopted by the stockholders, a copy thereof certified by such register shall be filed in the office of the secretary of state, who shall enter the date of filing thereon, and on the original agreement, certified as aforesaid, to be kept by the consolidated corporation, and shall record said copy. From the time of filing the copy of such agreement in the office of the secretary of state, said agreement shall be taken and deemed to be the agreement and act of consolidation of the said corporations and said original consolidation agreement or a certified copy thereof shall be evidence of the existence of such consolidated corporation and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation. When said agreement is so signed, acknowledged, adopted, recorded and filed, the separate existence of all of the constituent corporations, or all of such constituent corporations except the one into which such constituent corporations shall have been consolidated, shall cease, and the constituent corporations, whether consolidated into a new corporation or merged into one of such constituent corporations, as the case may be, shall become the consolidated corporation by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities, restrictions and duties of each of such corporations so consolidated and all and singular the rights, privileges, powers, franchises and immunities of each of said corpora-

tions, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, and all other things in action of or belonging to each of said corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason thereof; provided, that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

The notice herein provided for shall be given to all stockholders of record of all of the consolidating corporations, whether or not entitled to vote, but subject to any by-law provisions with reference to closing stockbooks prior to stockholders' meetings. If the holder of record of any share not entitled to vote in any constituent corporation selling, leasing, consolidating, or otherwise disposing of its property as aforesaid, shall at or prior to the taking of the vote, dissent therefrom in writing and shall at such time, or within one month from the date of such vote, file his written dissent therefrom with the president, clerk or treasurer of such corporation, then such non-voting shares of such stockholder shall be subject to and be entitled

to all of the rights granted by the eleven following sections in like manner as if they had been voting shares.

If the location of the consolidated corporation is not the same as that of the constituent corporations, then the clerk of the consolidated corporation shall within sixty days after such consolidation has become effective file a certificate of the consolidation, setting forth the names and locations of the consolidated and constituent corporations, in the registry of deeds of each county, other than that of the consolidated corporation, where the constituent corporations may be located.

The provisions of this section with reference to consolidation shall neither restrict nor enlarge the provisions of section one of chapter sixty-eight and section forty-four of chapter sixty-two as now amended.

APPENDIX B.

Mass. Bus. Corporation Law 1903.

Chap. 437, Sec. 40.

Section 40. Every corporation may, at a meeting duly called for the purpose, by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, authorize an increase or a reduction of its capital stock and determine the terms and manner of the disposition of such increased stock, may authorize a change of the location of its principal office or place of business in this commonwealth or a change of the par value of the shares of its capital stock, or may authorize proceedings for its dissolution under the provisions of section fifty-one.

It may, at a meeting duly called for the purpose, by the vote of two-thirds of all its stock, or, if two or

more classes of stock have been issued, of two-thirds of each class of stock outstanding and entitled to vote, or by a larger vote if the agreement of association so requires, change its corporate name, the nature of its business, the classes of its capital stock subsequently to be issued and their voting power, or make any other lawful amendment or alteration in its agreement of association or articles of organization, or sell, lease or exchange all its property and assets, including its good will and its corporate franchise, upon such terms and conditions as it deems expedient.

APPENDIX C.

Revised Statutes Illinois.

Ch. 114, Sec. 19.

"SEC. 19. Every corporation formed under this act shall, in addition to the powers hereinbefore conferred, have power:"

* * * * * * *

"Tenth—From time to time, to borrow such sums of money as may be necessary for completing, finishing, improving or operating any such railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted by such corporation for the purposes aforesaid; but the concurrence of the holders of two-thirds in amount of the stock of such corporation, to be expressed in the manner and under all the conditions provided in the fifteenth section of this Act, shall be necessary to the validity of any such mortgage; and the order or resolution for such mortgage shall be recorded as provided in the second section of this Act; and the directors of such corporation shall be em-

powered, in pursuance to any such order or resolution, to confer on any holder of any bond for money so borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of such corporation, at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the by-laws of such corporation."

Provisions of the 15th Section referred to, which 15th Section dealt with the matter of increase of capital stock reads as follows:

"Such increase shall be sanctioned by a vote in person or by proxy, of two-thirds in amount of all the stock of such corporation, at a meeting of such stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served personally or by depositing the same in a post office, directed to the post office address of each of said stockholders severally, with necessary postage for the transmittal of the same, prepaid, at least sixty days prior to the day appointed for such meeting, and by advertising the same in some newspaper published in each county through or into which the said road shall run or be intended to run (if any newspaper shall be published therein), at least sixty days prior to the day appointed for such meeting. Such notice shall state the time and place of meeting, the object thereof, and the amount to which it is proposed to increase such capital stock; and at such meeting the corporate stock of such corporation may be so increased, by a vote of two-thirds in amount of the corporate stock of such corporation, to an amount not exceeding the amount mentioned in the notices so given. Should the directors of any such corporation desire at any time to call a special meeting of the stockholders, for any other necessary purpose, the same may be done

in the manner in this section provided, and if such meeting be attended by the owners of two-thirds in amount of the stock, in person or by proxy, any other necessary business of such corporation may be then transacted, except the altering, amending or adding to the by-laws of such corporation: Provided, such business shall have been specified in the notices given.

REPLY

BRIEF

FILE COPY

FEB 16
CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

Nos. 585, 586

ROYAL INDEMNITY COMPANY ET AL.,
PETITIONERS,

vs.

THE AMERICAN BOND AND MORTGAGE COMPANY, INC.

REPLY BRIEF OF PETITIONERS.

SELDEN BACON,
SAUL S. MYERS,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

Nos. 585, 586

IN THE MATTER OF THE AMERICAN BOND AND MORTGAGE COMPANY, INCORPORATED, ALLEGED BANKRUPT.

ROYAL INDEMNITY COMPANY, A NEW YORK CORPORATION; PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DE FRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN, AND NEWELL BECKER (APPELLANTS BELOW), PETITIONERS,

vs.

THE AMERICAN BOND AND MORTGAGE COMPANY, INCORPORATED (APPELLEE BELOW), RESPONDENT.

MEMORANDUM IN REPLY.

In reply to the contention of the respondent we desire to note briefly four matters.

A. The decision of the District Court for Maine in the case of the *American Bond & Mortgage Co.*, 58

F. (2d) 379, is under appeal by leave of the Circuit Court of Appeals for the First Circuit. That appeal was argued in the Circuit Court of Appeals and submitted on January 3rd, 1933, and is awaiting decision.

B. As to the statement on page 10 of respondent's brief that:

> "As far as the record in this case is concerned, this respondent at the time of the filing of the Equity proceedings (R. 35) and the appointment of Receivers, and at all times thereafter, was solvent and was a going concern (R. 38)."

We desire to point out that the equity bill was filed at 5 p. m. on Thursday, May 21st, 1931, but no process was issued or served. The respondent voluntarily appeared early in the morning of Friday, May 22nd, 1931, and admitted the allegations of the bill and joined in its prayers, and the receivers were appointed and qualified immediately that day. On Monday, May 25th, 1931, the first succeeding full business day, an involuntary petition in bankruptcy was filed against the respondent in Maine alleging as an act of bankruptcy that the respondent was insolvent when those receivers were appointed. That allegation the bankrupt admitted and it was adjudicated a bankrupt on that uncontroverted allegation (p. 9).

So far, therefore, as the record is concerned, as well as in fact, the respondent was insolvent when the bill was filed—and that is *res adjudicata* in the case.

C. The statement of Judge Peters, quoted on page 11 of respondent's brief, is in the opinion previously

cited which is now under appeal, having been argued and submitted in the First Circuit Court of Appeals on January 3rd, 1933.

D. As counsel for respondent have ventured to say at page 11 of this brief that "What petitioners really desire is to have the administration in Maine (where the Company had only a paper charter) and not in Illinois where it had its place of business" we may perhaps be permitted to give our version which is:

What petitioners really desire is to have the administration in Maine (where the jurisdiction has always been unquestionable) and not in Illinois where the bankrupt and the Illinois District Court are striving to bring it in order to keep on administering the estate in the equity suit by the equity receivers as it is still doing, *in spite of adjudication of bankruptcy over a year ago, pursuing the same course the same court pursued in the case of the Acme Harvester Co. twenty years ago, despite the rebuke given in that instance by this Court,* 222 U. S. 300.

The blocking of proceedings in bankruptcy by the Illinois District Court has been so complete that despite the pretended voluntary adjudication there in September, 1931, the first meeting of creditors there has never been called. And while the creditors met in the Maine proceeding the Maine district judge, out of a mistaken deference to the Illinois District Court, ordered the creditors to adjourn at once *before examining the bankrupt's officers and before electing a trustee.* Consequently it has been impossible to have an examination of the corporate directors either at

the first meeting or under Section 21*a* of the National Bankruptcy Act.

It is against an administration in the Illinois court which has been for a year and a half throttling all efforts to proceed in bankruptcy that the creditors have protested, and now seek the aid of this Court. And this situation, so far from showing that there is nothing of public importance involved, emphasizes distinctly that the matter presented is of public importance. Though not tried out because of the rulings of law complained of, the court will be able to get a very clear idea of this situation from the record.

Respectfully submitted,

SELDEN BACON,
SAUL S. MYERS,
Counsel for Petitioners.

(3017)

FILE COPY

Nos. 585 and 586.

FILED
MAR 10 1
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

IN THE MATTER

of

THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, Bankrupt.

ROYAL INDEMNITY COMPANY, a New York corporation, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER, Appellants Below,

v.

THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, Respondent, Appellee Below.

ON APPEAL BY WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE APPELLANTS.

SELDEN BACON,
SAUL S. MYERS,
Of Counsel for Appellants.

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IN THE

Supreme Court of the United States,

OCTOBER TERM 1932.

Nos. 585 and 586.

IN THE MATTER
of
THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED,
Bankrupt.

ROYAL INDEMNITY COMPANY, a New York corporation, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER,
Appellants Below,

v.

THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED,
Respondent, Appellee Below.

ON APPEAL BY WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE APPELLANTS.

Opinion Below.

The opinion of the District Court (R., 258) has not been reported. The opinion of the Circuit Court of Appeals (R., 283) is reported in 61 Federal, 2d., 875.

Jurisdiction.

The decree to be reviewed was entered November 21, 1932. The writ of certiorari was petitioned for, and was allowed by this Court on February 20, 1933. The jurisdiction of this Court rests upon its allowance of the writ of certiorari. (Judicial Code, Sect. 240A, as amended by Act of February 13, 1925.)

Questions Presented.

The questions presented are as follows:

1. Section 63 of Chapter 56 of the Revised Statutes of Maine (1930) contains the following provision:

> "No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, *except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation.*"

Under this provision has the board of directors of a Maine corporation authority to file a petition in voluntary bankruptcy in the name of the corporation without any such consent or authorization from the stockholders?

2. In the case of a voluntary petition of a Maine corporation so authorized by the board of directors only, can creditors of the corporation, who have previously filed an involuntary petition at the domicile of the corporation, be heard to object to the jurisdiction of a different bankruptcy court under the alleged voluntary petition, on the above ground?

3. Whether the principal place of business of a Maine corporation can still be said to remain in the Northern District of Illinois, within the meaning of the Bankruptcy Act,

after; (1), omnibus receivers have been appointed of all its property and assets, including its offices, records and books, in the District Court of the United States for the Northern District of Illinois by final decree upon an omnibus bill and an answer of the corporation consenting to the relief sought; (2), such receivers have qualified and gone into complete possession under such decree; (3), the corporation and its officers and directors have been enjoined by the court appointing the receivers from interfering in any way with its assets and property; (4), the corporation being concededly insolvent at the time of their appointment; and (5), the court in the equity suit having found that it was necessary for the protection and preservation of the rights of its creditors that the assets, property and business be preserved and administered as an entirety through the receivers appointed by it by final decree.

This question arises because the equity receivers had been in full and undisturbed possession of the offices and all the assets in the Northern District of Illinois for the greater part of the six months next preceding the filing of the voluntary petition.

Statement of Facts.

Due presentation of this case calls for a slight amplification of the statement of the facts contained in the petition for certiorari, which statement, however, we follow in general.

As stated in that petition, on May 21, 1931, an omnibus bill in equity, was filed by simple contract creditors, in the District Court of the United States for the Northern District of Illinois, Eastern Division, against the American Bond & Mortgage Company (R. 35). The bill alleged that the American Bond & Mortgage Company was indebted to general creditors in a sum in excess of $8,000,000, part of which was overdue (R. 37). The bill further alleged that if the property and assets of the American Bond & Mortgage Company were sold or disposed of at forced sale, they

might prove insufficient to provide for payment of the indebtedness in full (R., 39). The bill further alleged that unless the Equity Court, in view of the inability of the defendant to meet its maturing obligations, would deal with the property of the defendant as a trust fund, for the payment of its creditors as their several interests should appear, there would be great and irreparable damage to the creditors and to the defendant itself (R., 40).

The bill prayed that the Equity Court "administer" all and singular the property, rights and assets of the defendant, and, in order to preserve and protect the property and assets, and in order that they might be held together *and ultimately sold or otherwise disposed of* in the most advantageous manner, that the court appoint receivers of all the property of the American Bond & Mortgage Company, with full power and authority to take into their possession and hold such property and assets (R., 40, 41). The bill further prayed that the receivers continue to manage and operate as a whole the business then being conducted by the defendant, etc., etc. (R., 41, 42). The bill also prayed for an injunction restraining the American Bond & Mortgage Company, and the owners, superintendents, managers, attorneys, agents and employees of that company from interfering with any of its properties, and "that at such time or times as may be found just and proper *the properties and assets of the defendant may be ordered to be sold, in whole or in part*, in such manner and upon such terms and conditions as this Honorable Court shall deem just and equitable, * * * and that the proceeds of any such sale be distributed among those entitled thereto as this Honorable Court shall adjudicate" (R., 44).

At the same moment that this bill in equity was filed, at 5 P. M. on May 21, 1931 there was filed in the same court a very defective petition in involuntary bankruptcy against the American Bond & Mortgage Co. and an even more insufficient petition for the appointment of a bankruptcy receiver in that proceeding (R., 14, 136). The attorneys who filed these petitions in *that* bankruptcy proceeding con-

ceded that they filed them with full knowledge of the coincident filing of the bill in equity and with the intention of having their bankruptcy proceeding be "cooperative" with the equity receivership (R., 136, 139, 140, 141, 162).

Early in the morning on the 22nd day of May, 1931, the defendant voluntarily appeared in the equity suit, without the issue of any process, expressly admitting all the allegations of the equity bill, and consenting to the relief prayed for therein. The cause was brought on to be heard on that day on Bill and Answer only, and the Court found "that it is necessary for the protection and preservation of the respective rights and equities of the complainants and of all other creditors of the defendant that the assets, property and business of the defendant be preserved and administered as an entirety through a Receiver to be appointed herein" (R., 48). The Court appointed the Chicago Title & Trust Company receiver (R., 48), and later on the same day, appointed Arthur W. Draper, as co-receiver, of all the property of the American Bond & Mortgage Company (R., 52).

No process upon the Bill in Equity was issued to the defendant out of the District Court of the United States for the Northern District of Illinois, Eastern Division, or served upon it, and it appeared and so answered the bill voluntarily (R., 137, 239).

By the order appointing the receivers, they were authorized and empowered to continue the operation of the business of the defendant, with the usual powers of receivers in like cases, until the further order of the Court (R., 49, 52), and the defendant, its officers, superintendents, managers, agents and employees were enjoined from interfering with the transferring, selling or disposing of any property or assets or income of the defendant and from attempting to sell or in any manner dispose of any part of the property or assets of the defendant (R., 51).

The receivers immediately qualified and took possession of *all* the property of the American Bond & Mortgage Com-

pany in the Northern District of Illinois, including its offices and its books, records, files and papers (R., 239).

The petitioners in the Illinois bankruptcy proceeding to which we have just referred acquiesced in this appointment of the equity receivers without objection, voluntarily postponing the hearing of their own application for a bankruptcy receiver which had been set down for the opening of court on May 22, 1931 (R., 4, 6, 7, 8, 26, 139).

On the 25th day of May, 1931, your present petitioners, as creditors of the American Bond & Mortgage Company, having claims amounting to many thousands of dollars in excess of all security held by them, filed a petition for the involuntary bankruptcy of the said American Bond & Mortgage Company in the District Court of the United States for the District of Maine, Southern Division (R., 57, 242). That was the district in which the said American Bond & Mortgage Company was and had been at all times for more than three years domiciled and resident (R., 238). The petition alleged among other acts of bankruptcy, the appointment of the said receivers with the consent and procurement of the said American Bond & Mortgage Company (R., 84).

Conceiving the Chicago bankruptcy proceeding to be merely collusive, some of your present petitioners answered in the Chicago bankruptcy proceeding (R., 139, 140), while one of them filed a motion to dismiss that Chicago bankruptcy petition as defective on its face. The American Bond & Mortgage Company also filed an answer in that Chicago involuntary bankruptcy proceeding of May 21, 1931 (R., 139).

The American Bond & Mortgage Company also filed an answer in the Maine bankruptcy proceeding denying its insolvency (R., 130).

A motion was then made before the District Court in Chicago, pursuant to General Order No. VI in Bankruptcy of this Court, to stay any hearing on the Chicago petition

until determination on the bankruptcy petition filed in Maine, the domicile of the corporation. At the same time the Chicago petitioners in bankruptcy brought on for hearing the motion to dismiss the Chicago petition. The Court heard these motions and took them under advisement and on September 5, 1931, filed two orders, one refusing to dismiss the Chicago involuntary petition, the other staying any action thereon until determination of bankruptcy in Maine (R., 17).

On the same 5th day of September, 1931, and considerably more than three months after the said Equity Receivers had taken full and complete possession of all the assets and property of the said American Bond & Mortgage Company in the Northern District of Illinois (including the offices that had been occupied by it prior to said receivership, its books, files, records and papers), the Board of Directors of the said American Bond & Mortgage Company, on their own sole authority, and without any meeting or resolution of the stockholders of the American Bond & Mortgage Company authorizing such a step, caused to be filed in the same District Court of the United States for the Northern District of Illinois, Eastern Division, a paper purporting to be a voluntary petition in bankruptcy of the American Bond & Mortgage Company. It appeared, however, on the face of that petition that it had been filed by the sole authority of the Board of Directors of the American Bond & Mortgage Company (R., 1-3).

The District Court of the United States for the Northern District of Illinois, Eastern Division, thereupon, without any prior notice to your petitioners, who were the petitioners in the said prior involuntary bankruptcy proceeding in the District of Maine, then pending, forthwith entered an adjudication of bankruptcy against the said American Bond & Mortgage Company on such alleged voluntary petition (R., 3, 17).

At the time of the adjudication in Illinois the Court had before it evidence in the equity suit as well as in the in-

voluntary bankruptcy proceeding, of the prior filing of the petition in bankruptcy in Maine, and its pendency, but no notice was given to the creditors who had filed the petition in Maine (R., 193).

Promptly on hearing of the filing of this voluntary petition and adjudication thereon the Royal Indemnity Company, one of the petitioning creditors in the Maine bankruptcy proceeding, applied to vacate the Chicago adjudication as entered without jurisdiction.

In accordance with the practice of the Illinois district, on the 10th day of September, 1931, the Royal Indemnity Company applied for leave to file a petition to vacate the said adjudication on said pretended voluntary petition and to dismiss that petition as without jurisdiction on various grounds (R., 5). These grounds included (1) the claim that the American Bond & Mortgage Company had not had its principal place of business in the Northern District of Illinois during the greater part of the six months next preceding the filing of the alleged voluntary petition, owing to the appointment of said receivers of all its Illinois property and offices, more than three months prior to the filing of the said involuntary petition (R., 13, 14, 15); (2) that the American Bond & Mortgage Company was organized and created under and by virtue of the laws of the State of Maine, by which laws only the stockholders in meeting assembled had authority to authorize the filing of a voluntary petition in bankruptcy, and no such meeting had been held or resolution passed by the stockholders authorizing such voluntary petition in bankruptcy (R., 15). The Court took the application under advisement, and finally leave was given to the Royal Indemnity Company (R., 7) to file such petition to vacate by order of November 11, 1931, and thereafter, your other petitioners, on leave duly granted, joined in the petition of the Royal Indemnity Company to vacate and set aside the adjudication of the said voluntary petition and to dismiss the same (R., 248, 249).

These petitions were subsequently answered by the American Bond & Mortgage Company, and the appointment of the receivers and their immediate qualifications, and taking possession of all the property in the Northern District of Illinois was expressly admitted (R., 239), as well as the facts that the American Bond & Mortgage Company was a Maine corporation and that the filing of the voluntary petition had not been authorized by any meeting of the stockholders of the American Bond & Mortgage Company, and that no such meeting of its stockholders had been held (R., 238, 239).

The Decisions of the Courts Below.

By permission of the District Court two questions of law involved, as to (a) whether, in view of the receivership, the American Bond & Mortgage Company could be said to have had its principal place of business in the Northern District of Illinois, after the property had been taken possession of by the receivers, and (b) the question whether the Court had the right to proceed to adjudication of a Maine corporation on a voluntary petition filed by no other authority than that of the Board of Directors, were taken up as matters of law. On those questions the District Court ruled:

(a) *as to the effect of the receivership:*

> "An examination of the bill of complaint in the equity receivership case, the answer thereto, and the order appointing the receiver, leads the court to the conclusion that it was the intent of the parties to that proceeding and of the court that the business of American Bond and Mortgage Company was not to be destroyed, but, on the contrary, was to be conserved and preserved. Since this was the purpose of the parties and of the court in that proceeding, the court holds that American Bond and Mortgage Company did not, because of the appointment of an equity receiver on May 22, 1931, cease to do busi-

> ness on that day, and, accordingly, did not, on that date, cease to have a place of business in the Northern District of Illinois."

and, (b) *as to the authority of the directors* of the American Bond & Mortgage Company to file a voluntary petition in bankruptcy without authority from the stockholders in meeting assembled, the District Court held:

> "It may be that the laws of Maine require the authorization of the stockholders in meeting assembled before a voluntary bankruptcy proceeding may be instituted by a Maine corporation, but if the board of directors of a Maine corporation authorize the filing of a voluntary bankruptcy proceeding, and such proceeding is filed in a court which otherwise had jurisdiction, it is exceedingly difficult to see what concern it is of a creditor whether that proceeding has been formally authorized by stockholders. As the court views the situation, a creditor is not at all concerned with this question, and this view has support in the authorities. *In Re Ann Arbor Mach. Corp.*, 274 Fed. 24; *In Re Wagy & Co.* 22 Fed. (2nd) 9. The court holds that this question cannot be raised by a creditor."

From the decrees entered upon that ruling, your petitioners appealed to the Circuit Court of Appeals for the Seventh Circuit, which, on November 21, 1932, filed its opinion (61 F. (2d) 875) affirming the said decision of the District Court saying:

> "The adjudication upon a voluntary petition is *ex parte*, and creditors are given no right to contest it. They are strangers at the bar and have no voice in the hearing, for the bankruptcy law permits no defense *in limine* to a voluntary petition. No defense is permitted by any party unless it be by stockholders contesting the asserted power of the directors."

On the point of the doing of business within the District, the Circuit Court of Appeals concluded by saying:

> "Remembering that it is clear that the intent of the court in the equity proceedings was not to destroy

> the business of the corporation, that that court was powerless to destroy or dissolve the corporation, that that court attempted in no way to interfere with the corporate identity or its powers or franchises except in the specific manner provided in the decree, that all such corporate powers not enjoined remained in the corporation, and that there is shown no change of locality for the transaction of such reserved corporate powers, however great or however little they may have been, it follows that the district court was justified in refusing to find that the principal place of business was not within the district during the greater part of the requisite statutory period."

The above are the rulings which it is now sought to review.

Subsequent to the hearing in Illinois on the application to vacate the adjudication in the voluntary bankruptcy proceeding and dismiss that proceeding, the first meeting of creditors of the bankrupt was called by the Referee in Maine, and the first meeting assembled; but it was immediately adjourned by direction of the District Court without permitting the creditors to elect a trustee or examine the bankrupt's officers, in order to enable the Maine District Court to hear petitions of the bankrupt and of a so-called committee of bondholders for the transfer of the Maine bankruptcy proceeding to the Illinois district (see 58 F. (2d) 379). **These petitions had been set down for hearing only after the entry of the adjudication of bankruptcy in Maine and reference of that proceeding to the Referee in Bankruptcy and the calling of the first meeting of creditors by the Referee in Bankruptcy** (58 F. (2d), 379). In fact the final petitions of the so-called bondholders committee and the bankrupt for such transfer were filed only after the expiration of the time within which creditors could file their proofs of debt in Maine and had actually filed such proofs of debt; and

that so-called committee had itself filed an alleged proof of debt with the Referee in Bankruptcy in Maine.

As one ground of objection to those applications for transfer it was urged that there was no valid pending bankruptcy proceeding in the Illinois district, that the involuntary proceeding there clearly had no existence, in view of the decision of this Court in the case of *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S., 300; and as to the alleged voluntary proceeding in Chicago the objections now raised were asserted in the Maine Court as well as other reasons why the administration should not be so transferred.

With regard to the sufficiency of the voluntary petition the District Judge in Maine wrote:

> "The same points made here were urged before Judge Barnes, noted in his opinion and decided. While not concluded by his action, I should certainly regard it as very pursuasive and believe that, in the interest of orderly procedure and speedy ending of litigation, I should not decline to follow it unless I concluded that it was clearly wrong. At least, it is a precedent which I feel justified in following, and I do so."
>
> *In re American Bond & Mortgage Co.*, 58 F. (2d) 379.

The Circuit Court of Appeals for the First Circuit allowed an appeal from the order so made by the District Court of Maine directing transfer. That petition was argued in the Circuit Court of Appeals early in January, 1933 and taken under advisement by that Court but has not yet been decided.

Although not directly involved in this appeal, we think it only proper to call attention to the fact that save for the hearing on the motion to dismiss the Illinois involuntary bankruptcy petition of May 21, 1931, no step has ever been taken or been attempted to be taken in *that* proceeding by

the petitioners since the day of its filing, nearly two years ago.

The action of the District Court of the United States for the Northern District of Illinois, Eastern Division, on the equity side in subsequently appointing equity receivers and proceeding to administer the estate in equity seems to bring that dormant Illinois involuntary proceeding directly within the decision of this Court in *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, even aside from the feature of its collusive character, a feature discussed with marked ability before this Court by Hon. William G. Mitchell, former Attorney General and Mr. William C. Bullitt, in the case of *United States* v. *Butterworth Corp.*, 269 U. S. 504, at pages 505-6.

It would seem that the recent comments made by this Court on such Equity receiverships in the case of *Michigan* v. *Michigan Trust Co.*, 286 U. S. 334, are peculiarly applicable to this particular equity receivership, which still continues to operate, despite the unquestionable adjudication of bankruptcy in Maine in October, 1931, and the questioned adjudication of September 5th, 1931 in Illinois.

This Court will, perhaps, observe that the answer of the American Bond & Mortgage Company to the petition to vacate contains no suggestion that the Equity Receivers or the District Court of the United States for the Northern Disrict of Illinois, Eastern Division, have ever taken any steps to assert rights of the corporation against its former officers and controlling stockholders (R., 235). Over 200 creditors have expressed their particular desire that administration of the estate be conducted under the control of the District Court of the United States for the District of Maine, Southern Division, where adjudication has long ago been had (R., 9) and the first meeting of creditors held and adjourned by the direction of the court without their electing a trustee. If there was no valid pending petition in Illinois, the administration must be in Maine. Over 400 creditors filed their claims in Maine, and the bankrupt filed its schedules there.

Specification of Errors to Be Urged.

The District Court and the Circuit Court of Appeals erred

1. In holding that creditors of the American Bond & Mortgage Company, although the petitioning creditors in the bankruptcy proceeding already pending in the District Court of the United States for the District of Maine, Southern Division, had no right to contest the adjudication of bankruptcy under the alleged voluntary petition, on the ground that the said petition had not been authorized by the corporation in accordance with the laws of Maine under which it was created and existed.

2. In holding that the principal place of business of the American Bond & Mortgage Company continued to be in Illinois after the appointment of the Equity Receivers and their taking possession of the property and assets of the corporation.

And the Circuit Court of Appeals also erred

3. In affirming the decision of the District Court of the United States for the Northern District of Illinois, Eastern Division, upon the petition to vacate the adjudication of bankruptcy on the voluntary petition.

Summary of Argument.

The law of a state creating a corporation determines what agencies within a corporation have the power to take such steps in its name as filing a petition in bankruptcy. Under the law of Maine that power is specifically reserved to the stockholders in meeting assembled. By the decision of the court of last resort in Maine such provisions of the Maine law can be insisted on by creditors or any other parties interested as well as by stockholders, and that rule of Maine should have been regarded as controlling by the

Illinois courts in dealing with a Maine corporation. Without action by the stockholders the petition was not the voluntary petition of the corporation.

When the omnibus receivers were appointed of all its property in Illinois and took over its assets and offices there, the American Bond & Mortgage Company could no longer be said to have its principal place of business in the Northern District of Illinois. It was out of business there. The receivers had been in such possession for considerably more than three months next prior to the filing of the voluntary petition and there was consequently no jurisdiction of that voluntary petition so filed in Illinois.

The Bankruptcy Act in providing where petitions can be filed confines the jurisdiction outside of the domicile of a corporation to the district where the bankrupt has had *its* principal place of business during the greater part of six months next preceding the filing of the petition. When the receivers went into possession and the bankrupt ceased to do business in Illinois, it ceased to have *its* principal place of business there.

POINTS AND AUTHORITIES.

POINT I.

The board of directors had no power to authorize a voluntary petition in bankruptcy by the American Bond and Mortgage Company, and a petition filed solely by their authority is not the voluntary petition of the corporation.

There was for a time an apparent sharp divergence between the decisions of different Courts of Bankruptcy as to the power of the board of directors of a corporation to authorize the filing of a voluntary petition in bankruptcy. It was soon observed, however, that the decisions in favor of such powers were as to corporations organized under the laws of States which did not expressly confine such powers to the stockholders. Where the corporate laws of a State provided that such power could be exercised only by the stockholders, it was uniformly held that action by the board of directors conferred no jurisdiction.

Some half dozen or more States have, or have had, such statutes, and, where the statutes have been so construed, the rulings have been uniform that only the stockholders could authorize voluntary petitions in bankruptcy.

In re *Standard Shipyard Co.*, 262 Fed., 522 (D. C. Me.).

In re *Quartz Gold Mining Company*, 157 Fed. 243 (D. C. Ore.).

Van Emon v. *Veal*, 158 Fed. 1022 (C. C. A. 9th Cir.).

In re *Burbank Co.*, 168 Fed. 719 (D. C. N. H.).

In re *Crystal Ice Co.*, 283 Fed. 1007 (D. C. Mont.).

In re *Security, etc. Assn.*, 52 F. (2d) 961 (D. C. Nev.).

In re *Bates Machine Co.*, 91 Fed. 625 (D. C. Mass.).

It is now settled law that the question whether the Board of Directors of a corporation has the power to authorize the filing of a voluntary petition in bankruptcy is to be determined exclusively by the law of the State organizing the corporation. It determines by its own laws where the various corporate powers of its creature reside and what persons shall exercise them.

Home Powder Co. v. *Geis,* 204 Fed. 568.
In re *Russell Wheel Co.,* 222 Fed. 569, 573.
In re *Vassar Foundry Co.,* 293 Fed. 248.
In re *Standard Shipyard Co.,* 262 Fed. 522, 526.
Loveland on Bankruptcy (4th Ed.), Sec. 136.
Black on Bankruptcy (4th Ed.) p. 310.

Under the laws of Maine, even before the present prohibitory statute, the Board of Directors of a corporation had no power to transfer its fundamental assets, but only to carry on its business.

Rollins v. *Clay,* 33 Me. 132.

And this decision was rendered in favor of one who was not a stockholder, establishing as the law of Maine corporations that the right to raise this objection was not confined to stockholders.

The Maine corporation law was largely revised by statute in 1891 and by that Act it was specifically provided:

> "No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation."

Rev. Stat. Me. Cap. 56, Sec. 63.
(For full text of section, see Appendix A.)

And this Maine statute was construed years ago by the District Court of the United States for the District of Maine as depriving the Directors of any power of filing a voluntary petition in bankruptcy on behalf of the corporation.

> In re *Standard Shipyard Company,* 262 Fed. 522, 526.

That such is the law of Maine has not been disputed either by the District Court or by the Circuit Court of Appeals in this case.

The question is the simple one whether, pursuant to Section 4 of the Bankruptcy Act, the American Bond & Mortgage Company has, in fact and in law, filed "a petition to be adjudged a voluntary bankrupt." If unauthorized persons have filed such a petition in its name and ostensibly on its behalf, then such petition was not the act and petition of the corporation itself; the corporation has never declared its willingness and purpose to be "a voluntary bankrupt"; the conditions of Section 4 of the Bankruptcy Act have not been fulfilled; and the court was without jurisdiction.

POINT II.

The petitioning creditors in the Maine bankruptcy proceeding were entitled to raise the objection.

Since the Maine law is clear that such power did not reside in the Board of Directors, it would seem that, totally irrespective of the capacity of the petitioners, the court of its own motion should have vacated the adjudication and dismissed the voluntary petition as unauthorized and as conferring no jurisdiction. But the courts below in this case have avoided this result, by holding that such action by the Board was not void, but only voidable, and that the invalidity could be taken advantage of solely by stockholders who alone could avoid the effect of the act of the Board.

The courts below have in this case held that even though the objection that the petition was not the act of the corporation ran to the jurisdiction of the Bankruptcy Court, these creditors (petitioners in the earlier petition in the Maine district) could not be heard to object, and the Court would not itself take the objection.

The law of Maine, as established by its Court of last resort is to the contrary.

Rollins v. *Clay,* 33 Me. 132.

And the United States Courts in Illinois were bound to accept the Maine Court's construction of the Maine law of corporations.

In the very recent case of *Commerce Trust Company* v. *Chandler,* 295 Fed. 241, the Circuit Court of Appeals for the First Circuit held that, under the provisions of the corresponding Massachusetts Act (see Appendix B) the objection could be raised not only by the stockholders but by anyone else in interest.

In discussing this Massachusetts statute, the First Circuit Court of Appeals said:

"In the statute before us the Legislature was dealing with vital matters relating to the conduct and the life of corporations. We think it intended to prohibit a corporation, by its directors, or by less than two-thirds of its stock, at a lawful meeting, to change its corporate name, or the nature of its business, or the classes of its capital stock and their voting power, or to make any other lawful amendment or alteration in its agreement of association or articles of organization, or to sell, lease, or exchange all its property and assets, including its good will and its corporate franchise. We think the Legislature intended to place these fundamental changes in a corporation beyond the powers of directors and beyond the powers of stockholders representing less than two-thirds of its stock. The Legislature did not undertake to limit the protective powers of the statute, nor to say for whose protection it was made. We think it was clearly made for the benefit of stockholders; but we think it was not for their exclusive benefit. We think the Legislature intended to say that any person whose property rights were invaded by a noncompliance with the terms of this statute could assert the invalidity of any act attempted to be done without such compliance."

Commerce Trust Company v. *Chandler*, 295 Fed. 241, 243-244.

Under similar New York statutes forbidding the execution of corporate mortgages without the consent of the stockholders, it is held by the Second Circuit Court of Appeals, as well as by the New York Court of Appeals, that the objection can be raised by anyone.

In re *Post & Davis Co.*, 219 Fed. 171.
In re *James, Inc.*, 30 F. (2d) 555.
Leffert v. *Jackman*, 227 N. Y. 310.
Maryland Company v. *Schaefer Co.*, 141 Misc. 629, aff'd. without opinion 232 A. D. 766 and 256 N. Y. 663.

On the other hand, the Circuit Court of Appeals for the Seventh Circuit had previously held that, under the Illinois Railroad Law (for the details of which see Appendix C), the statutory requirement of consent of two-thirds of the stockholders, is for the protection of the stockholders only, and the stockholders alone may use it, following a decision of the Supreme Court of Illinois.

> *U. S. Mortgage & Trust Co.* v. *Chicago & A. R. Co.*, 40 F. (2d) 386, 389.

In the Eighth Circuit Court of Appeals, there were dicta to like effect concerning the effect of a Colorado statute.

> *Westerlund* v. *Black Bear Mining Co.*, 203 Fed. 599.

But as the suit there under consideration was brought by stockholders, the matter was merely dictum, and curiously enough, was, in part, predicated on District Court decisions in the Second Circuit which have long since been overruled.

As Maine is within the First Circuit, some especial weight would seem to attach to the decision of the First Circuit Court of Appeals on the similar Massachusetts statute, and it is perhaps not unworthy of note that the Judge writing the opinion in the *Chandler* case in the First Circuit Court of Appeals (295 Fed. 241), from which we have quoted, is the same Judge who, sitting in the District Court of the United States for the District of Maine, had previously made the similar ruling as to the force of the Maine statute in the *Standard Shipyard* case, 262 Fed. 522.

The decision of the Supreme Court of Maine, in *Rollins* v. *Clay*, 33 Me. 132, that even prior to the statute the objection as to the limitation of the powers of directors could be taken by any person in interest, would seem to declare the policy of that State on the point, and, if so construed, that decision is controlling as to the construction to be placed on the Maine statute, though disregarded by the courts below.

POINT III.

Upon the appointment and qualification of the equity receivers, and their taking possession of all of the property of the American Bond and Mortgage Company in the Northern District of Illinois, including its offices, books and papers thereon, the corporation being itself enjoined from interfering with that property in any way, that corporation ceased to have its principal place of business in the Northern District of Illinois.

In the following cases, receiverships of this character were squarely held to have put an end to foreign corporations having their principal place of business in the district of the receivership.

In re Perry Aldrich Co., 165 Fed. 249 (D. C. Mass.).

In re McNally Co., 208 Fed. 291 (D. C. S. D. N. Y.).

It had seemed to us that the Circuit Court of Appeals for the Seventh Circuit many years ago, in the case of *In re Plotke*, 104 Fed. 964, had strongly intimated that the conduct of business by an assignee in insolvency did not suffice to continue the principal place of business of the bankrupt as the place where the assignee resided when the bankrupt had removed from the State after the assignment. The circuit Court of Appeals for the Seventh Circuit in the opinion under appeal in referring to that case as making no announcement in conflict with its decision, would seem to have failed to notice that feature of its earlier decision.

The industry of counsel has so far succeeded in disclosing but a single other case which is contrary to the ruling in the *Perry Aldrich* case and the *McNally Company* case. The case we refer to is *In re American & British Manufacturing Corporation* (300 Fed. 839), decided, in the District

Court of the United States for the District of Connecticut, subsequent to the decisions in the *Perry Aldrich* case and the *McNally Company* case, which decisions were not even mentioned by the court in Connecticut.

In that Connecticut case, the question *considered* by the Court seems to have been rather one as to the character of the business than as to the locality of conducting it during the greater part of the six months next preceding the filing of the petition in bankruptcy. Both court and counsel in that case seem to have *assumed* that business done by the equity receiver was business done by the corporation. The decision of the case, however, was in conflict with the direct rulings made in the *Aldrich* and *McNally* cases.

The cases cited by Judge Thomas in the *American & British* case to support his decision did not deal with the point here involved, but were decisions solely on the point of whether the character of business of the corporation remained unchanged by the receivership. On the subject of the applicability of the principal place of business clause to the conduct of business by omnibus receivers, we have found no direct decisions except those mentioned.

Section 2(1) of the Bankruptcy Act does not refer to the principal place of *the business*, but to the place where "the persons bankrupt have *their*" principal place of business. In other words, the Bankruptcy Act refers to the place where *the bankrupt* is doing business, not to a place where a business it once owned is being done by someone else. (*In re McNally Co.*, 208 Fed. 291; *In re Perry Aldrich Co.*, 165 Fed. 249.)

The Bankruptcy Act does not create out of the business a sort of separate entity or existence, irrespective of the identity of the persons conducting the same. On the contrary, the thing emphasized by the statute is the identity of the person conducting the business. It is the place where the bankrupt himself has had *his* principal place of business during the required period.

When, therefore, the business passes out of his hands and it is taken over and conducted by others, he ceases to be in that business in that place, even though the business itself as such may go on. The relevant consideration is that the bankrupt himself has ceased to conduct the business, and that, therefore, the locality has ceased to be the place where the bankrupt has "*his* principal place of business." Consequently, when the courts below undertook to decide that the continuance of the business in the same locality is sufficient to give jurisdiction, they were improperly personifying the business and misreading the Bankruptcy Act.

The court below based its ruling in part also upon the assertion that "all such corporate powers not enjoined remained in the corporation, and that there is shown no change of locality for the transaction of such reserved corporate powers, however great or however little they may have been." But this clearly is not the meaning of the word "business" in Section 2 (1) of the Bankruptcy Act. That word is obviously used in its common and usual meaning and refers to active and personal engagement in a commercial pursuit. The mere exercise of naked corporate powers, separate and apart from active management of the commercial enterprise which the corporation had in hand, is not the conduct of business within the meaning of that section.

We urge that certain decisions of this court clearly establish the true rule as to the nature and effect of such a receivership, a rule differing from that adopted by the court below.

As to its nature, the decisions of this Court in *Price* v. *United States*, 269 U. S. 492, 502, and *United States* v. *Butterworth*, 269 U. S. 504, seem controlling.

As to the effect of such a receivership, we believe the decision in *United States* v. *Whitridge*, 231 U. S. 144, establishes that during this receivership *the corporation* no

longer was doing business in the Northern District of Illinois.

The decision of the Sixth Circuit Court of Appeals in *Ohio* v. *Ferris,* 229 Fed. 892, seems to be to like effect.

The receivership in this case covered the greater part of the six months next preceding the filing of the voluntary petition. After the appointment of those receivers and their taking over possession of all the assets of the American Bond & Mortgage Company in the Northern District of Illinois, including its offices, its files and its records, it would seem that that corporation was "out of business" in the Northern District of Illinois.

POINT IV.

The decrees appealed from should be reversed and the adjudication of bankruptcy by the District Court for the Northern District of Illinois should be vacated and the voluntary petition dismissed.

Respectfully submitted,

SELDEN BACON,
SAUL S. MYERS,
Of Counsel for Appellants.

Appendix A.

REV. STAT. ME. CAP. 56, SEC. 63.

Corporation not to sell franchises or entire property without consent of stockholders, R. S., c. 51, s. 60., 1929, c. 242. No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation. All such sales, leases and consolidations shall be subject to the provisions of this and the eleven following sections, and to the prior lien of stockholders as therein defined. Except as to franchises, this and the eleven following sections shall not be held to apply to mortgages or corporate property.

To effect a consolidation under the provisions of the foregoing paragraph and subject to the provisions of this and the eleven following sections, any two or more corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state, or any corporation or corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state and any corporation or corporations organized under the laws of any other state, may consolidate into a single corporation which may be either one of said corporations, provided the same be a corporation originally organized under the laws of this state, or a new corporation under the laws of this state to be formed by means of such consolidation, by entering into an agreement duly authorized by a majority of the directors of the respective corporations and signed by the duly authorized officers, and under the respective seals of said corporations, prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, whether or not

the consolidated corporation shall be one of the constituent corporations or a new corporation created by such consolidation, and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set out in the certificate of organization of corporations organized under this chapter and as are pertinent in the case of a consolidation, the manner of converting the capital stock of each of such consolidating corporations into the stock or obligations of such consolidated corporation together with such other provisions and details as shall be deemed necessary to perfect the consolidation. Said agreement shall be acknowledged by one of the executing officers of each of the consolidating corporations before an officer authorized by the laws of this state to take acknowledgments of deeds, to be the respective act, deed and agreement of each of said corporations.

Subject to provisions of by-laws with reference to closing stock-books prior to stockholders' meetings said consolidation agreement shall be submitted to the stockholders of record of each corporation at a meeting thereof called separately for the purpose of taking the same into consideration, and at said meeting a vote in person or by proxy shall be taken for the adoption or rejection of said agreement, and if the votes of stockholders of each corporation representing a majority of the voting power, on a proposal to consolidate said corporation with another, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the clerk or secretary of each corporation and the agreement so signed, acknowledged, adopted and certified, after it has been examined by the attorney-general, and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws of this state, shall be recorded in the registry of deeds in the county where the said consolidated corporation is located, and within sixty days after the day of the meeting at which said consolidation agreement is adopted by the stockholders, a copy thereof certified by such register shall be filed in the office of the secretary of

state, who shall enter the date of filing thereon, and on the original agreement, certified as aforesaid, to be kept by the consolidated corporation, and shall record said copy. From the time of filing the copy of such agreement in the office of the secretary of state, said agreement shall be taken and deemed to be the agreement and act of consolidation of the said corporations and said original consolidation agreement of a certified copy thereof shall be evidence of the existence of such consolidated corporation and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation. When said agreement is so signed, acknowledged, adopted, recorded and filed, the separate existence of all of the constituent corporations or all of such constituent corporations except the one into which such constituent corporations shall have been consolidated, shall cease, and the constituent corporations, whether consolidated into a new corporation or merged into one of such constituent corporations, as the case may be, shall become the consolidated corporation by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilites, restrictions and duties of each of such corporations so consolidated and all and singular the rights, privileges, powers, franchises and immunities of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, and all other things in action of or belonging to each of said corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way im-

paired by reason thereof; provided, that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

The notice herein provided for shall be given to all stockholders of record of all of the consolidating corporations, whether or not entitled to vote, but subject to any by-law provisions with reference to closing stockbooks prior to stockholders' meetings. If the holder of record of any share not entitled to vote in any constituent corporation selling, leasing, consolidating, or otherwise disposing of its property as aforesaid, shall at or prior to the taking of the vote, dissent therefrom in writing and shall at such time, or within one month from the date of such vote, file his written dissent therefrom with the president, clerk or treasurer of such corporation, then such non-voting shares of such stockholder shall be subject to and be entitled to all of the rights granted by the eleven following sections in like manner as if they had been voting shares.

If the location of the consolidated corporation is not the same as that of the constituent corporations, then the clerk of the consolidated corporation shall within sixty days after such consolidation has became effective file a certificate of the consolidation, setting forth the names and locations of the consolidated and constituent corporations, in the registry of deeds of each county, other than that of the consolidated corporation, where the constituent corporations may be located.

The provisions of this section with reference to consolidation shall neither restrict nor enlarge the provisons of secton one of chapter sixty-eight and section forty-four of chapter sixty-two as now amended.

Appendix B.

MASS. BUS. CORPORATION LAW 1903.
CHAP. 437, SEC. 40.

Section 40. Every corporation may, at a meeting duly called for the purpose, by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, authorize an increase or a reduction of its capital stock and determine the terms and manner of the disposition of such increased stock, may authorize a change of the location of its principal office or place of business in this commonwealth or a change of the par value of the shares of its capital stock, or may authorize proceedings for its dissolution under the provisions of section fifty-one.

It may, at a meeting duly called for the purpose, by the vote of two-thirds of all its stock, or, if two or more classes of stock have been issued, of two-thirds of each class of stock outstanding and entitled to vote, or by a larger vote if the agreement of association so requires, change its corporate name, the nature of its business, the classes of its capital stock subsequently to be issued and their voting power, or make any other lawful amendment or alteration in its agreement of association or articles of organization, or sell, lease or exchange all its property and assets, including its good will and its corporate franchise, upon such terms and conditions as it deems expedient.

Appendix C.

REVISED STATUTES ILLINOIS.
CH. 114, SEC. 19.

"SEC. 19. Every corporation formed under this act shall, in addition to the powers hereinbefore conferred, have power:"

* * * * * * *

"*Tenth*—From time to time, to borrow such sums of money as may be necessary for completing, finishing, improving or operating any such railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted by such corporation for the purposes aforesaid; but the concurrence of the holders of two-thirds in amount of the stock of such corporation, to be expressed in the manner and under all the conditions provided in the fifteenth section of this Act, shall be necessary to the validity of any such mortgage; and the order or resolution for such mortgage shall be recorded as provided in the second section of this Act; and the directors of such corporation shall be empowered, in pursuance to any such order or resolution, to confer on any holder of any bond for money so borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of such corporation, at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the by-laws of such corporation."

Provisions of the 15th Section referred to, which 15th Section dealt with the matter of increase of capital stock reads as follows:

"Such increase shall be sanctioned by a vote in person or by proxy, of two-thirds in amount of all the stock of such corporation, at a meeting of such stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served person-

ally or by depositing the same in a post office, directed to the post office address of each of said stockholders severally, with necessary postage for the transmittal of the same, prepaid, at least sixty days prior to the day appointed for such meeting, and by advertising the same in some newspaper published in each county through or into which the said road shall run or be intended to run (if any newspaper shall be published therein), at least sixty days prior to the day appointed for such meeting. Such notice shall state the time and place of meeting, the object thereof, and the amount to which it is proposed to increase such capital stock; and at such meeting the corporate stock of such corporation may be so increased, by a vote of two-thirds in amount of the corporate stock of such corporation to an amount not exceeding the amount mentioned in the notices so given. Should the directors of any such corporation desire at any time to call a special meeting of the stockholders, for any other necessary purpose, the same may be done in the manner in this section provided, and if such meeting be attended by the owners of two-thirds in amount of the stock, in person or by proxy, any other necessary business of such corporation may be then transacted, except the altering, amending or adding to the by-laws of such corporation: Provided, such business shall have been specified in the notices given.

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Supreme Court of the United States

OCTOBER TERM, 1932.

No. 585

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, et al.,

Petitioners,

vs.

AMERICAN BOND & MORTGAGE COMPANY.

No. 586

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, et al.,

Petitioners,

vs.

AMERICAN BOND & MORTGAGE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR INJUNCTION, AND NOTICE OF MOTION.

SELDEN BACON,
SAUL S. MYERS,
Attorneys and Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1932

Nos. 585 and 586

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Sirs:

PLEASE TAKE NOTICE that upon the annexed petition of the Royal Indemnity Company and of Parkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, and the printed record on file in the office of the Clerk of the Supreme Court of the United States in the above entitled causes, we shall on behalf of the said petitioners move the above-named Court at a Term thereof appointed to be held on March 13, 1933 at the Capitol at Washington at the opening of the

court on the said day or as soon thereafter as counsel can be heard, for an injunction to be issued by the above-named Court restraining the Chicago Title & Trust Company and Arthur W. Draper, Esq., as Receivers in Equity of the assets of the above-named American Bond & Mortgage Company and any of their successors, and their and each of their attorneys, agents and servants from proceeding with their application Exhibit A of the said annexed petition and from in any way interfering with any of the property or estate of the bankrupt, pending the decision of this Court upon the matters brought before this Court under the above mentioned writs of certiorari, except only to conserve such property, and during the same time from seeking the appointment of any Receiver in bankruptcy of such property in the Involuntary Proceeding in bankruptcy so begun against said American Bond & Mortgage Company in the District Court of the United States for the Northern District of Illinois in May, 1931; and for such other and further proper relief in the premises as may be just and agreeable to equity.

Dated, March 8, 1933.

Yours respectfully,

SELDEN BACON,
SAUL S. MYERS,
Attorneys and Counsel for
Petitioners.

To:
CHICAGO TITLE & TRUST COMPANY
and ARTHUR W. DRAPER, ESQ.,
as Receivers in Equity of American Bond
& Mortgage Company,
69 West Washington Street,
Chicago, Ill.

DEFREES, BUCKINGHAM, JONES & HOFFMAN, ESQS.,
105 South La Salle Street,
Chicago, Illinois.

KIRKLAND, FLEMING, GREEN & MARTIN, ESQS.,
33 North La Salle Street,
Chicago, Illinois,
Attorneys for such Receivers.

A. L. SCHAPIRO, ESQ.,
First National Bank Building,
Chicago, Illinois,

WILLIAM E. LEAHY, ESQ.,
Investment Building,
Washington, D. C.,
Attorneys and Counsel for Respondent in the above entitled appeals.

WHITE & HAWXHURST, ESQS.,
Attorneys for the Petitioning Creditors in the Involuntary Bankruptcy Proceeding in Illinois,
1 North La Salle Street,
Chicago, Illinois.

H. E. AMBLER, ESQ.,
Attorney for the Defendant, American Bond & Mortgage Company, in the Equity Action in Illinois,
127 North Dearborn Street,
Chicago, Illinois.

TOWNLEY, WILD, CAMPBELL & CLARK, ESQS.,
Attorneys for the Plaintiffs in the Equity Action in Illinois,
105 South La Salle Street,
Chicago, Illinois.

SUPREME COURT OF THE UNITED STATES,

October Term, 1932

Nos. 585 and 586

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Royal Indemnity Company and of Parkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, respectfully shows to this Honorable Court:

1. That they are the petitioners for the writs of certiorari in the above entitled causes now pending in this court, in which this Court on the 20th day of February,

1933, granted the petitions for the writs of certiorari, and the printed record therein has been filed in the office of the Clerk of this Court and the causes have been set down for argument in this Court, and, as your petitioners are advised by the Clerk of this Court, will probably be reached and heard about the 20th or 21st of the present month of March.

2. That the question primarily presented on such writs of certiorari is as to the validity of an alleged adjudication of bankruptcy entered in the District Court of the United States for the Northern District of Illinois, Eastern Division upon an alleged voluntary petition of the above-named bankrupt filed in that Court on the 5th day of September, 1931, which adjudication has been sustained by the Circuit Court of Appeals for the Seventh Circuit, to review which action of that Court the present writs of certiorari have been allowed.

3. That an adjudication of bankruptcy of the above-named bankrupt of unquestioned validity was entered in the District Court of the United States for the District of Maine, the domicile and State of origin of the bankrupt, on the 15th day of October, 1931 on a petition in involuntary bankruptcy filed in that Court against the said bankrupt on the 25th day of May, 1931, by your petitioners as creditors of the bankrupt.

4. That in the District Court of the United States for the District of Maine there was entered an order on the 6th day of May, 1932 transferring the administration of the bankrupt's estate to the District Court of the United States for the Northern District of Illinois. That the Circuit Court of Appeals for the First Circuit allowed an appeal from that order which appeal was argued and submitted to that Court on the 3rd day of January, 1933 and is now there under advisement.

5. That at 5 P. M. on the 21st day of May, 1931 there was filed in the District Court of the United States for

the Northern District of Illinois an omnibus bill in equity by simple contract creditors of the said American Bond & Mortgage Company, against that Company, asking the appointment of Equity Receivers of that Company, to preserve and administer the assets.

6. And that, at the same moment there was filed in that Court a pretended petition in involuntary bankruptcy against said American Bond & Mortgage Company by certain other alleged creditors of the bankrupt. That answers to that petition were promptly filed both by the bankrupt and by other creditors of the bankrupt and the same have never been brought to trial. With that petition there was also filed on that day a petition for the appointment of a receiver in bankruptcy which failed on its face to show any grounds for the appointment of a Receiver in bankruptcy.

7. That on the 22nd day of May, 1931, the bankrupt voluntarily appeared in said equity suit and consented to the relief sought by the bill, and final decree appointing such Receivers in the equity suit was forthwith entered on that 22nd day of May, 1931; and the Receivers immediately qualified and on that day took possession of all the assets of the bankrupt in the Northern District of Illinois.

8. That the Illinois bankruptcy petitioners acquiesced in the appointment of such equity receivers, and their counsel subsequently admitted in open court that their petition in bankruptcy was filed with full knowledge of the contemporaneous filing of the said bill in equity and was intended to be "cooperative" therewith. And that no further steps in advance have ever been taken on the said involuntary petition in bankruptcy so filed in Chicago on May 21, 1931.

9. That the said Equity Court has gone on, despite the said adjudication of bankruptcy in Maine on October 15, 1931 and despite the said alleged adjudication in the voluntary proceeding in Illinois on September 5, 1931, administering the estate.

10. That no first meeting of creditors has ever been called under the said voluntary Illinois adjudication.

11. That the first meeting of creditors under the Maine adjudication was called, and was held on the 30th day of March, 1932, but by direction of that Court was adjourned, subject to recall by the Court, without electing a trustee in bankruptcy, and still stands so adjourned.

12. That, as your petitioners are advised and believe, upon the entry of a valid adjudication of bankruptcy the power of the equity court to administer the estate of the bankrupt ceased and passed to the bankruptcy court.

13. That as your petitioners are advised and believe, on the facts shown in the record on said writs of certiorari, the involuntary proceeding so begun on May 21, 1931, was long since abandoned and rejected, under the decision of this Court in the case of *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, and is no longer pending.

14. That if the alleged voluntary adjudication in Illinois be void, as is contended by the appellants in these appeals to this Court, the entire property of the bankrupt, on the entry of the adjudication in Maine on October 15, 1931, passed into the custody, jurisdiction and control of the District Court of the United States for the District of Maine.

15. That if the alleged voluntary adjudication in the Illinois District Court be valid, then by the said writs of certiorari now pending in this Court, all said property and estate of the bankrupt have by said writs of certiorari been brought into the control and jurisdiction of this Court.

16. That in neither event, as your petitioners are advised, has the Equity Court in the Northern District of Illinois any right to take any action over the estate of the bankrupt, except to turn it over to the proper bankruptcy court. Nor has the District Court of the United States for the Northern District of Illinois any jurisdiction, as your petitioners are advised and believe, to proceed to the ap-

pointment of a Receiver in bankruptcy in said abandoned and rejected involuntary proceeding in the Illinois District Court, in derogation of the adjudication in the Maine District.

17. Nevertheless, the Equity Receivers, so appointed have *since the allowance of the said writs of certiorari* by this Court, caused to be presented to the said District Court of the United States for the Northern District of Illinois, sitting in the said equity suit, a petition and notice of which a copy is hereto annexed marked *Exhibit A* and hereby made a part of this petition, and have caused copies of such petition and annexed notice to be sent to the attorneys for your petitioners in this pending proceeding and have presented said petition to the said Equity Court, and are seeking action thereon by said District Court of the United States for the Northern District of Illinois.

18. That the President Monroe Building referred to in the said annexed Exhibit A is situate in the City of New York, in the State of New York, and the interests therein mentioned and described in said Exhibit A and as to which action is thereby sought, are part of the estate of the bankrupt involved in the said adjudication in Maine, and in the said alleged adjudication in Illinois, and in the said appeals to this Court under said writs of certiorari. Said building is owned by the President Monroe Corporation which is a corporation organized under the laws of New York.

19. That the said Equity Receivers are threatening to proceed with their said application, though the same has been temporarily adjourned.

20. Your petitioners hereby refer to and make a part of this petition the printed record on appeal in the above entitled appeals to this Court under the said Writs of Certiorari so granted by this Court.

The various proceedings referred to in this petition and in the said petition Exhibit A hereof are the same proceed-

ings referred to in the said printed record, where they are more fully set forth.

WHEREFORE your petitioners pray that this Court enjoin and restrain the said Receivers in Equity, their successors if any and their agents and attorneys and each of them, from proceeding with their said application and from in any way interfering with any of the property or estate of the bankrupt which has so been brought into the jurisdiction of this Court by the said writs of certiorari so issued by this Court, pending the decision of this Court upon the said writs of certiorari, except only to conserve such property, and during the same time from seeking the appointment of any Receiver in bankruptcy of such property or any thereof in the said involuntary proceeding so begun against said American Bond & Mortgage Company in the said District Court of the United States for the Northern District of Illinois in May, 1931; and that this Honorable Court grant your petitioners any other and further proper relief in the premises as may be just and agreeable to equity.

And your petitioners will ever pray, etc.

Dated, March 8, 1933.

SELDEN BACON,
SAUL S. MYERS,
Attorneys and Counsel for
Petitioners.

VERIFICATION.

STATE OF NEW YORK, }
County of New York, } ss.:

SAUL S. MYERS, being duly sworn on oath deposes and says that he is the duly authorized agent and attorney in this behalf of the petitioners herein, that he has, on behalf of the said petitioners, executed the foregoing petition; that he knows the contents thereof and that the same are true. Deponent further says that the reason that this verification is not made by the petitioners is that deponent has been acting as the attorney in this matter for the said petitioners since May 23, 1931 and is personally familiar with all of the facts herein set forth.

SAUL S. MYERS

Sworn to before me this 8th }
day of March, 1933. }
ROSE M. SILICH

ROSE M. SILICH
Notary Public
N. Y. County Clk's No. 238
N. Y. Register's No. 4S967
Commission expires March 30, 1934

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION.

IN EQUITY NO. 10539.

T. H. CLARKE, *et al.*,

Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation,

Defendant.

Notice.

To: TOWNLEY, WILD, CAMPBELL & CLARK, 105 SOUTH LASALLE STREET, H. E. AMBLER, 127 NORTH DEARBORN STREET, MOSES, KENNEDY, STEIN & BACHRACH, 231 SOUTH LASALLE STREET, WHITE & HAWXHURST, 1 NORTH LASALLE STREET.

PLEASE TAKE NOTICE that on Saturday, March 4, 1933, at the opening of court in the forenoon or as soon thereafter as counsel can be heard, we shall appear before the Honorable James H. Wilkerson, sitting as one of the Judges of said court, in the room usually occupied by him as a court room in the Federal Building, in the City of Chicago, Illinois, and in his absence before the Judge who may at that time be sitting in his stead, and present the petition of Chicago Title & Trust Company, a corporation, and Arthur W. Draper, Receivers for said American Bond and Mortgage Company, praying for the entry of an order in con-

formity with the prayer of said petition; a copy of which petition is hereto attached and herewith served upon you; at which time and place you may appear if you so desire.

DEFREES, BUCKINGHAM, JONES & HOFFMAN,
KIRKLAND, FLEMING, GREEN & MARTIN,
Solicitors for Receivers.

RECEIVED a copy of the above notice together with copy of the petition therein referred to this day of March A. D. 1933.

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.....

.....

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION.

IN EQUITY NO. 10539.

T. H. CLARKE, *et al.*,

Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation,

Defendant.

Petition of Receivers for an Order Authorizing Them to Enter Into an Agreement Re the Reorganization of the President Monroe Building at New York.

TO THE HONORABLE JAMES H. WILKERSON, ONE OF THE JUDGES OF SAID COURT:

Now comes CHICAGO TITLE AND TRUST COMPANY, a corporation, and ARTHUR W. DRAPER, Co-Receivers for said defendant corporation, and respectfully represent unto the Court as follows:

1. That pursuant to the orders entered herein on May 22, 1931, appointing your petitioners as receivers of the property, assets and effects of the said American Bond and Mortgage Company and authorizing and empowering your petitioners to continue the operation of the business of said corporation, your petitioners did thereupon take possession of all of its property, assets and effects and have since been and are now in complete control and management of said company.

2. That one Charles E. Hughes, Jr., was on May 27, 1931, appointed ancillary receiver of said defendant corporation by the United States District Court for the Southern District of New York; that he is duly qualified and is now acting as such ancillary receiver.

3. That subsequent to their appointment as such receivers, the defendant corporation filed in this court its voluntary petition in bankruptcy and to-wit: on September 5, 1931, was adjudicated a bankrupt. Thereafter certain creditors filed a motion to dismiss said bankruptcy on the grounds that this District Court did not have jurisdiction of the defendant corporation. This motion was denied and an order was entered by the District Court that it had jurisdiction to administer the estate. On an appeal to the Unied States Circuit Court of Appeals for the Seventh Circuit the holding of the District Court was upheld. From the ruling of the United States Circuit Court of Appeals the same creditors have petitioned the United States Supreme Court for writ of certiorari and on February 20, 1933, the said petition for certiorari was allowed and the matter now awaits the filing of briefs by the respective parties. That in addition to being adjudicated a bankrupt in this District, the defendant corporation was to-wit: on September 15, 1931, adjudicated a bankrupt by the United States District Court for the District of Maine, Southern Division, and said Court also entered an order transferring the proceedings and administration of said bankrupt estate to the United States District Court for the Northern District of Illinois, Eastern Division. An appeal has been taken from said order of transfer to the United States Circuit Court of Appeals for the First Circuit, which Court now has the appeal under advisement. In neither of the aforesaid proceedings has a receiver been appointed for the defendant corporation nor has a trustee been elected and the affairs of said defendant corporation are still being administered by your petitioners as receivers and your petitioners as receivers for the defendant corporation in

this proceeding are still in possession of all of its property, assets and effects and are still in complete control and management of said company.

That in addition to the foregoing bankruptcy proceedings, an involuntary petition in bankruptcy was filed against the American Bond and Mortgage Company in this Court on the 21st day of May A. D. 1931, and numbered 47250, and on said date there was also filed in this court in said bankruptcy proceedings, by Bellamy-Neff Co., one of the petitioners in bankruptcy, a petition for the appointment of a bankruptcy receiver for said defendant corporation. That to-wit: On the 29th day of May A. D. 1931, your receivers, together with the defendant corporation, filed an answer in the bankruptcy proceedings last above mentioned, denying insolvency and the alleged acts of bankruptcy as in said petition set forth and demanded a trial by jury; that on September 5, 1931, said answer was withdrawn; that also on September 5, 1931, an order was entered in said bankruptcy proceedings staying all further proceedings until the further order of the court. That on June 14, 1932, the petitioning creditors in said proceeding filed a motion therein for an order vacating the order staying the proceedings and for the entry of an order of adjudication; that said motion was continued from time to time and is still pending; that no further orders have been entered in said proceedings nor has a receiver been appointed or a trustee elected for the defendant corporation in said proceedings.

4. That among the property, assets and effects of said company which your receivers have in their possession are 250 shares of the common stock of the President Monroe Corporation (being all of the outstanding stock of said corporation) which is a corporation owning the premises known as the President Monroe Building and located at 270 Lafayette Street, in New York City; that said stock represents an investment of the defendant corporation of $119,743.08 in said building corporation; that attached

hereto marked Exhibit "A" is a complete analysis of the investment of the American Bond and Mortgage Company in said premises.

5. That also among the assets coming into the possession of your receivers were the following bonds and interest coupons, being part of a first mortgage bond issue secured by the aforesaid President Monroe Building premises:

Bonds due December 1, 1928		
Purchased before maturity.....	1500	
" on maturity date	5000	
" after " "	6000	$ 12,500
Bonds due December 1, 1929		
Purchased before maturity.....	500	
" on maturity date	3500	
" after " "	8500	12,500
Extended and subordinated bonds		1,000
Interest coupons due June 1, 1929		26,940.51
Total interest including investment of $119,-743.08 above referred to		$172,683.69

That the original first mortgage bond issue was $1,-075,000.00 in principal amount of which amount $70,000.00 has been paid and cancelled and $22,500.00 in principal amount extended and subordinated, leaving $982,500.00 first mortgage bonds unsubordinated outstanding and unpaid and not expressly subordinated. Principal payments maturing December 1, 1928, June 11, 1929, December 1, 1931, and semi-annually thereafter totaling $66,000.00 are past due and unpaid. Of this amount the 1928 and 1929 maturities in the sum of $25,000.00 are held by American Bond and Mortgage Company, which also holds $26,940.51 of coupons which matured June 1, 1929 and which are also

unpaid. Sufficient funds have not been deposited to pay the interest coupons which matured December 1, 1932. Real estate taxes for the second half of the year 1929 and for the years 1930 and 1931 and 1932 aggregating approximately $88,200.00 exclusive of interest and penalties are in arrears. The property is not earning sufficient to meet its taxes, principal and interest requirements. On account of these defaults the Committee for the Protection of Holders of First Mortgage Bonds sold through American Bond and Mortgage Company has called these bonds for deposit in order to protect the interests of the first mortgage bondholders and foreclosure proceedings are about to be instituted by the first mortgage trustee in accordance with the terms of said first mortgage; that attached hereto marked Exhibit "B" is a complete statement of the outstanding bonds of this issue.

6. That the attorneys for the Committee formed for the protection of bonds sold through the American Bond and Mortgage Company have submitted to your receivers the provisions of a plan of reorganization for the above premises. Under the plan as submitted and negotiations connected therewith, your receivers as owners of all of the aforesaid stock will be called upon to consent to the said corporation executing an assignment of rents to the Irving Trust Company and Charles C. Moore, corporate and individual trustees respectively under the aforesaid mortgage, said assignment to be effective from December 1, 1932, and to further consent to said President Monroe Corporation transferring all of its present assets consisting of over $15,000.00 in cash, accounts receivable in the approximate amount of $13,500.00, unexpired insurance premiums, the equity in the property, together with existing leases and together with approximately $7,211.73 of cash deposited to secure rents due under certain of said leases, all to a corporation to be formed to acquire the title to the property under sale under said foreclosure proceedings, or otherwise. The plan further provides that your

receivers turn over all the bonds and coupons which they hold as aforesaid, reserving, however, all their rights under suits which have heretofore been instituted against one Joseph G. Siegel on account of his guarantee of payment of certain bonds and coupons of the aforesaid issue. The plan further provides for the establishment of a voting trust with three voting trustees, under the terms of which the capital stock of the new corporation shall be held by such voting trustees and the President Monroe Corporation will be permitted to name one of said trustees as part consideration for the transfer of the property above referred to.

The plan further provides that the capital stock of said President Monroe Corporation shall be deposited in escrow with proxies authorizing the carrying out of the plan, which contemplates that in order to save trustees and/or receivers fees and those of their attorneys pending the carrying out of the plan, that the management and the operation of the property shall be carried on through said President Monroe Corporation subject to the supervision of the Bondholders Committee as aforesaid.

The plan and negotiations in connection therewith further include recognition of the holders of the extended and subordinated bonds and coupons by issuance to them of voting trust certificates on the basis of two shares for each $300 of the face principal amount of such extended and subordinated bond and/or coupons.

The plan further contemplates that said new corporation shall borrow a sufficient amount, approximately $175,000.00 to cover foreclosure expenses, reorganization costs, committees' fees, taxes, insurance, distribution to non-depositing bondholders and a small amount for the new corporation; that said sum so borrowed will be a first mortgage upon the said premises and as such will be prior to any of the rights or interest your receivers will acquire under said proposed plan of reorganization; that Committees' fees for the reorganization will be a sum equal to 5% of the face principal amount of bonds outstanding at the time of the call for deposit.

The plan and the negotiations in connection therewith contemplate that $2,000.00 face principal amount of said first mortgage bonds held by your receivers which were purchased prior to maturity shall be placed on a parity with other unmatured bonds and that $23,000.00 face principal amount of said first mortgage bonds held by your receivers as aforesaid, which were purchased on or after maturity together with the interest coupons aggregating $26,940.51 above referred to due June 1, 1929 which were purchased by American Bond and Mortgage Company on or after maturity shall be subordinated as to 1/3 of the face amount thereof and that the remaining 2/3 of the face amount thereof shall be placed on a parity with other bonds and coupons of this issue.

If this plan is carried out said President Monroe Corporation will be required to execute and deliver said assignment of rents as of from and after December 1, 1932 and will make a contribution of approximately $29,700.00 made up as above set forth and will transfer the equity in said premises to the new corporation, together with said approximate amount of $7,211.73 of cash deposited by tenants to secure rents under certain of said leases, which will be transferred and assigned to said new corporation, together with unexpired insurance policies and accounts receivable and in consideration thereof will receive voting trust certificates for 12½% of the capital stock of said new corporation.

If said plan is carried out your receivers will be required to consent to the above mentioned transactions by President Monroe Corporation and to deposit said capital stock of President Monroe Corporation in escrow with proxies authorizing the carrying out of said plan and to deposit with the depositories of said Bondholders Committee said bonds and coupons owned by American Bond and Mortgage Company on a parity with and/or subordinated to the other first mortgage bonds of said issue under the terms above set forth and under the terms and subject to the condition of said plan and if said plan is consum-

mated your receivers will receive voting trust certificates therefor in the proportions above set forth, on the same basis as those received by other depositing bond and coupon holders, which it is understood will be voting trust certificates for one share of the capital stock of such new corporation for each $100 of face principal amount of said bonds and/or coupons which have not been subordinated or deposited under said plan and voting trust certificates for two shares for each $300 of subordinated bonds and coupons deposited under said plan; that anyone withdrawing their bonds or coupons after first depositing same with the depositories of said Bondholders Committee, shall be required to pay an amount equal to 5% of the face principal amount of said bonds and coupons withdrawn, to said Committee.

Your receivers are informed that under the laws and procedure of the courts in the State of New York foreclosure bars redemption by any person properly made a party to the foreclosure proceedings and your receivers understand that since the President Monroe Corporation does not have sufficient funds and under present conditions of depression, reduced rentals and vacancies cannot obtain sufficient funds to make up the defaults above described, and since, under forced sale the property probably will not bring in enough to pay the first mortgage indebtedness, that the investment of President Monroe Corporation in said property and the investment of American Bond and Mortgage Company in said property through its ownership of the capital stock of said President Monroe Corporation and its investment in the bonds and coupons of said bond issue will be seriously jeopardized and lost as to most thereof in case said plan is not entered into and said foreclosure proceedings are carried out and sale made thereunder.

That your receivers believe that in order to prevent unnecessary waste to this estate and to protect the creditors of the American Bond and Mortgage Company, it is to the best interests of this estate that they be permitted to authorize President Monroe Corporation to enter into said

plan and to execute such instruments and agreements that may be necessary to carry out the terms thereof and that your receivers be permitted and authorized to execute and deliver such instruments and agreements and to make such deposits as may be necessary to carry out the terms of said plan, or that an order be entered in the involuntary bankruptcy proceedings pending before this court and numbered 47250, vacating the order staying all further proceedings, and that a further order be entered in said bankruptcy proceedings appointing a receiver or receivers for said bankrupt corporation, to take immediate possession of all of the property, assets and effects of said corporation.

WHEREFORE your receivers pray that an order may be entered herein authorizing and directing them to authorize said President Monroe Corporation to execute and deliver said assignment of rents and to execute and deliver such instruments and contracts and to do such other acts as may be necessary to carry out said plan and that your receivers be authorized and directed under said order to make such deposits of bonds and coupons and to execute and deliver such instruments and contracts and to do such other acts as may be necessary to carry out said plan, subject to the conditions above set forth, or that an order be entered in the involuntary bankruptcy proceedings pending against the defendant corporation in this court and numbered 47250, vacating the order staying said proceedings, and that a further order be entered in said bankruptcy proceedings appointing a receiver or receivers for said bankrupt corporation, to take immediate possession of all of the property, assets and effects of said corporation and to conserve its assets, and for such other and further relief in the premises as to the court shall seem meet.

CHICAGO TITLE AND TRUST COMPANY, a Corporation, and ARTHUR W. DRAPER, Receivers,

By CHARLES CARROLL
Their Duly Authorized Agent
in this Behalf.

STATE OF ILLINOIS }
County of Cook } ss.:

CHARLES CARROLL, being first duly sworn, on oath deposes and says that he is the duly authorized agent in this behalf of the Chicago Title and Trust Company, a corporation, and Arthur W. Draper, receivers in the above entitled cause; that he has, on behalf of said receivers, executed the foregoing petition; that he knows the contents thereof and that the same are true.

CHARLES CARROLL

Subscribed and sworn to before me this * day of February A. D. 1933.

*

.....
Notary Public.

* These places have been left blank on the original filed in Court.

EXHIBIT A.

PRESIDENT MONROE.

Analysis of the investment of American Bond and Mortgage Company in the Building.

Real Estate Equity Account—		*Debit*	*Credit*
12-31-27	Advance made to Stoddard & Mark	$ 6,336.42	
12-31-27	Collateral Note of A. Corcoran dated 5-11-27 with collateral of 400 shares of 63 Prince Street Corporation	10,000.00	
12-31-27	Open Account	14,229.42	
12-31-27	Foreclosure sale value of bonds and coupons due 6-1-27 totaling $54,937.50	7,508.13	
1-26-28	Credit for coupons due 6-1-27 received from Trustee		47.76
5-28-28	Credit for coupons due 6-1-28 received from Trustee		2,071.49
9-26-28	Credit for coupons received from Trustee		31.00
12-26-28	Credit for coupons received from Trustee		6.15
8-16-30	Coupons due 6-1-28 ..	3,451.71	
	Coupons due 12-1-27..	34,287.50	
	Open account of J. Siegel	47,429.37	
4-20-31	Credit balance transferred from Client's account		1,343.07
	Totals	$123,242.55	3,499.47
	Balance	$119,743.08	

Brought forward—Balance			$119,743.08
Bonds—		*Debit*	*Credit*
Bonds due December 1, 1928			
Purchased before maturity.		1500.—	
" on maturity date		5000.—	
" after " "		6000.—	12,500.00
Bonds due December 1, 1929			
Purchased before maturity.		500.—	
" on maturity date		3500.—	
" after " "		8500.—	12,500.00
Extended and Subordinated Bonds			1,000.00
Coupons—			
Interest Coupons due June 1, 1929			26,940.51
Total Interest...			$172,683.59

EXHIBIT B.

PRESIDENT MONROE.

Description of Outstanding Bonds.

Original Issue		$1,075,000.—
Bonds used in foreclosure when A B & M Co. took title now carried in equity account	20,000.—	
Bonds paid and cancelled	50,000.—	
Bonds extended to June 1, 1935	22,500.—	95,500.—
Outstanding matured and unmatured bonds		$ 982,500.—
Not Extended		
First Mortgage Bonds unmatured in the hands of the public	930,000.—	
First Mortgage Bonds matured in the hands of the public	27,500.—	
First Mortgage Bonds matured owned by A B & M Co.	25,000.—	
	$982,500	
Extended Bonds owned by A B & M Co.	1,000.—	
Extended Bonds in the hands of public	21,500.—	
	22,500.—	

FILE COPY

MAR 16

CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 585

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, et al.,

Petitioners,

vs.

AMERICAN BOND & MORTGAGE COMPANY.

No. 586

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, et al.,

Petitioners,

vs.

AMERICAN BOND & MORTGAGE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY TO ANSWER ON MOTION FOR INJUNCTION.

SELDEN BACON,
SAUL S. MYERS,
Attorneys and Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1932

Nos. 585 and 586

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DE FRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ON PETITION FOR INJUNCTION.

REPLY TO ANSWER ON MOTION FOR INJUNCTION.

The prime question presented on this appeal is whether the adjudication on the voluntary petition in bankruptcy filed in Chicago on September 5th, 1931 is valid. If it is not, all the proceedings in Chicago have, as we contend, been improper at least from May 25th, 1931, when the bankruptcy petition was filed in Maine, if not from the beginning at 5 p. m. on May 21st, 1931, when the bill in equity

and the collusive petition in involuntary bankruptcy were filed together in the Northern District of Illinois.

The respondents contend that the involuntary proceeding in Chicago has not been prosecuted for the 22 months since its filing because all proceedings therein were stayed on the application of these petitioners. **Such is not the fact.** The stay granted was predicated on General Order in Bankruptcy No. 6 of this Court, by which determination of the question of bankruptcy should first be had, in the domiciliary jurisdiction (Maine). It was granted on September 5th, 1931, and by its terms, as well as on the basis of the application under that General Order, it ran

> "proceedings on said petition to be stayed until the "hearing on the petition in bankruptcy filed against "the respondent herein in the District Court for the "District of Maine or until the further order of the "court" (Record, p. 17).

The adjudication in Maine was entered on October 15th, 1931; so that out of 22 months the stay lasted just 40 days. The rest of the delay of 22 months, three months and a half before the stay and eighteen months since it expired, has been entirely voluntary; and even today it is no party to that proceeding that seeks to revive it, but the equity receivers to whom it was admittedly intended to give "cooperation".

It was not the filing of the petition to vacate the voluntary adjudication that prevented the sending out of notices of a first meeting under that voluntary adjudication in Chicago. That adjudication was entered on September 5th, 1931, and the matter referred to the Referee the same day (Record, pp. 3, 4). It was not until the 11th day of November, 1931 that the Royal Indemnity Co. was even given leave to file its petition to vacate (Record, p. 7) and even then twenty days was given to all other parties to answer it (ibid). No stay of proceedings was sought or granted. Nothing prevented the calling of the first meeting of creditors under that adjudication within the statutory 30 days

ending October 5th, 1931 (Bankruptcy Act, Sec. 55) unless it was a combination of a conviction that the proceeding would ultimately be held to be void, and the desire to keep on administering in the equity receivership, just as they had been doing, despite the unquestionable validity of that bankruptcy proceeding in Maine.

If we are right in our contentions on this appeal it is the bankrupt and the equity receivers who have been combining all this time to prevent the orderly administration of the estate of this bankrupt in the unquestionably valid bankruptcy proceeding in Maine, and not these petitioners who have pressed steadily for a proper administration of the estate.

That the making of an order, on the petition of these equity receivers, appointing a Receiver in the original collusive bankruptcy proceeding of May 21, 1931, in Chicago, which "died a-bornin", will further complicate the matter and tend to render the relief asked by this appeal ineffective is obvious, and doubtless is the real purpose of it. This case is apt to be heard in this court on Monday next, March 20th, 1933. There is nothing to show that brief delay over the proposed reorganization of the President Monroe Corporation will prejudice any one.

Moreover, this extraordinary situation is presented: If the Chicago voluntary adjudication is valid, the property should be administered by a trustee or Receiver under that adjudication. If it is void it must be administered under the Maine adjudication. In neither event is there any jurisdiction to proceed in the defunct collusive Chicago bankruptcy proceeding of May 21, 1931. It has no jurisdiction to appoint in Illinois an ancillary receiver of property which is situate, in law, either at the domicile of the bankrupt, Maine, or at the domicile of the President Monroe corporation, New York. And if any *equity* Receiver were in a position to make such an application it would seem to be the *ancillary equity* Receiver of the bankrupt appointed on May 27, 1931, by the District Court for the Southern District of New York (Motion papers of Equity Receivers

in Chicago, p. 14 of Petition for Injunction, par. 2), who has made no such application.

We believe ourselves entirely justified in the belief that the sole purpose of the application by the Equity Receivers in the Chicago court for the appointment of a Receiver in bankruptcy in the defunct involuntary bankruptcy proceeding there, is to evade the effect of a reversal by this court of the decree appealed from.

The opinion of Judge Peters from which the respondents quote is actually under direct review in the First Circuit Court of Appeals, the appeal having been argued on January 3rd, 1933, and the principal rulings of Judge Peters are on the principal points before this court on the pending appeal here. His opinion under the circumstances will hardly be regarded as controlling here. But the fact that the respondents cite that opinion in opposition to our present motion, and as having direct bearing thereon, certainly makes plain that the pending application in Chicago, which we seek to stay, does interfere with the matters pending before this court on our present appeal, and affect them.

SELDEN BACON
SAUL S. MYERS
Attorneys and Counsel
for Petitioners.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

SAUL S. MYERS, being duly sworn on oath deposes and says that he is the duly authorized agent and attorney in this behalf of the petitioners herein, that he has, on behalf of the said petitioners, executed the foregoing reply; that he knows the contents thereof and that the same are true. Deponent further says that he is a member of the Supreme Court of the United States and that the reason that this verification is not made by the petitioners is that deponent has been acting as the attorney in this matter for the said petitioners since May 23, 1931 and is personally familiar with all of the facts herein set forth.

SAUL S. MYERS.

Sworn to before me this)
15th day of March, 1933.)
ROSE M. SILICH
Notary Public
N. Y. County Clk's. No. 238
N. Y. Register's No. 4S967
Commission expires March 30, 1934

FILE COPY

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Nos. 585 and 586.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCIS C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN AND NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

SELDEN BACON,
SAUL S. MYERS,
Counsel for Appellants.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1932.

Nos. 585 and 586.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCIS C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN AND NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

In these cases a proof of the respondent's brief was first received by us on Sunday, March 19th, 1933, and the brief itself only on March 20th, 1933. After the argument on March 21st, 1933 counsel for respondent handed up a brief note of authorities.

We desire to submit this brief reply memorandum.

1. On the argument counsel for respondent was asked the amount of liabilities and the comparative assets but was unable to give them. The court will find a statement of the liabilities and an analysis of the assets at pages 143-155 and 208-212 of the record. It will be noticed that even the claim of sufficient assets to meet liabilities asserted in the equity bill, later admitted and adjudged to be incorrect, was predicated on putting a "substantial" value on the "good-will" of the bankrupt (p. 39, par. Fourteenth).

2. It was admitted by the amended answer to the present application that all the doing of business in Illinois, after the appointment of the equity receivers, was by them and that the Receivers had entire possession of the offices and business (p. 239; par. 22). It was a question of *law* therefore, on these admitted facts, whether the corporation any longer had *its* principal place of business in Chicago after the Receivers took possession.

Hartigan v. *Casualty Co.*, 227 N. Y. 175.

3. The original report of the corporation to the State of Illinois filed in 1931 stated that the Corporation did no business in Illinois in 1930 (p. 55, Answers 13, 15 and 18). There is no suggestion that there was any variation in *this* respect in the supplemental report (See par. 28, p. 226). Attention is also called to the allegation in paragraph 31 of the respondent's answer, that respondent "states the fact to be that during the year 1930, your respondent actually transacted business in its own name" (p. 226).

The conjunctive allegation on the same page (par. 29) that it was actively engaged in business in Illinois "during the years 1930 and 1931" must needs be read with the allegation just quoted from paragraph 31. It does *not* say "throughout" 1930 and 1931.

4. We are unable to see that the decisions in *Banco Comercial* v. *Benn*, 31 F. (2nd) 921, 923, and *In re Schulte United*, 59 F. (2nd) 553, 559, have anything to do with the case at bar.

An application by the petitioning creditors in the Maine proceeding, who were entitled to notice but were given none, to vacate the Chicago adjudication, affecting their rights, on the ground of lack of jurisdiction, was not addressed to the mere discretion of the court. And if it had been, it was an abuse of discretion to refuse to vacate the decree of voluntary adjudication, if the Court was without jurisdiction to render it.

5. The District Judge in *Roszell* v. *Continental Coal Co.*, 235 Fed. 346, was quite in error in thinking that the question whether the bankrupt was domiciled or had its principal place of business in the District for the required period went only to the *jurisdiction of the person*, and not to the jurisdiction of the subject matter. Clearly a New York corporation which had never done business or had a place of business or any property outside that State, could not confer jurisdiction on the bankruptcy court in the District of New Mexico by voluntarily entering its appearance there. Jurisdiction of the subject-matter in bankruptcy is confined to cases within the specifications of the Act. The New Mexico District Court would have *no jurisdiction of the subject-matter* of a petition against such a New York corporation, or a voluntary one by it.

6. Petitions in bankruptcy are always possible at the domicile of a corporation coming within the terms of the Act. The jurisdiction in cases where the corporation has had "its principal place of business" for the required period next preceding the filing of the petition, in a par-

ticular District, is only an added privilege of going to such District where the jurisdictional facts exist.

7. The order refusing to vacate does not pretend to be a default order, but one expressly based on overruling the contentions of law advanced by the petitioners to vacate (pp. 265-266).

Respectfully submitted,

SELDEN BACON,
SAUL S. MYERS,
Counsel for Appellants.

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FEB 8

CHARLES ELM

IN THE

Supreme Court of the United States

October Term, A. D. 1932.

No. 585-586

In the Matter of THE AMERICAN BOND AND MORTGAGE COMPANY, INCORPORATED, Alleged Bankrupt.

ROYAL INDEMNITY COMPANY, a New York Corporation, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DeFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER,

(Appellants below) Petitioners,

against

THE AMERICAN BOND AND MORTGAGE COMPANY, INCORPORATED,

(Appellee below) Respondent.

BRIEF OF RESPONDENT, THE AMERICAN BOND AND MORTGAGE COMPANY IN OPPOSITION TO PETITION OF ROYAL INDEMNITY COMPANY, ET AL., FOR WRIT OF CERTIORARI.

WILLIAM E. LEAHY,
of Washington, D. C.
A. L. SCHAPIRO,
of Chicago, Illinois,
Counsel for Respondent.

BERNARD C. SCHIFF,
of Chicago, Illinois,
Of Counsel.

HAWKINS & LOOMIS CO., LAW PRINTERS, CHICAGO

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The opinion of the Circuit Court of Appeals (R. 283) is reported in 61 F.(2d) 875. The opinion of the District Court (R. 258) is not reported.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1932.

In the Matter of THE AMERICAN BOND AND MORTGAGE COMPANY, INCORPORATED, Alleged Bankrupt.

ROYAL INDEMNITY COMPANY, a New York Corporation, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DeFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER,

(Appellants below) Petitioners,

against

THE AMERICAN BOND AND MORTGAGE COMPANY, INCORPORATED,

(Appellee below) Respondent.

BRIEF OF RESPONDENT, THE AMERICAN BOND AND MORTGAGE COMPANY, IN OPPOSITION TO PETITION OF ROYAL INDEMNITY COMPANY, ET AL., FOR WRIT OF CERTIORARI.

Preliminary statement.

In view of petitioners' failure to clearly set forth the nature of the proceedings below, we respectfully call attention of the Court to certain salient facts in the case. This additional summary, in accordance with the rule, we trust may be of assistance to the Court.

On September 5, 1931, the American Bond and Mortgage Company, (respondent herein) filed a voluntary petition in bankruptcy in the United States District Court for the Northern District of Illinois, Eastern Division,

(R. 1) and was adjudicated a bankrupt on said date (R. 3).

On September 10, 1931, Royal Indemnity Company, as an alleged creditor of the respondent herein made its motion in said voluntary bankruptcy proceedings for leave to file its petition for vacation of said order of adjudication and other relief, which motion was allowed on November 11, 1931 (R. 7).

On November 11, 1931, petitioner, Royal Indemnity Company, as an alleged creditor of the American Bond and Mortgage Company filed in said voluntary bankruptcy proceedings its sworn petition and supplement thereto praying that said order of adjudication in bankruptcy and general reference be vacated and set aside and that said voluntary petition in bankruptcy be dismissed, on alleged jurisdictional grounds (R. 9).

On February 2, 1932, respondent American Bond and Mortgage Company filed its amended answer denying that the petitioner Royal Indemnity Company was a creditor in the amount as alleged in its petition or in any other amount (R. 237-238).

On February 15, 1932, the individual petitioners herein as creditors of the respondent American Bond and Mortgage Company filed their sworn petitions similarly praying and adopting the said petition of the Royal Indemnity Company, its allegations and prayers (R. 249).

On February 25, 1932, respondent American Bond and Mortgage Company filed its answer to said petitions wherein it prayed that its said amended answer to the petition of the Royal Indemnity Company be permitted to stand and deemed to be an answer to the said intervening petitions (R. 257-258); that in and by said amended answer this respondent admitted that since the 22nd day of May, 1931, equity receivers had custody and

possession of its property and assets in the Northern District of Illinois but denied that it had not transacted business in the Northern District of Illinois and had no office therein and had not had its principal place of business therein (R. 239); that in and by said amended answer this respondent admitted that no meetings of its stockholders had been called or held for the purpose of authorizing said voluntary petition in bankruptcy but denied that under the laws of Maine only the stockholders in the meeting duly called could authorize the filing of a voluntary petition in bankruptcy and denied that Directors of a Maine corporation have no authority to authorize the filing of a voluntary petition in bankruptcy; that in and by said amended answer this respondent alleged that ninety-three per cent of the outstanding capital stock of the American Bond and Mortgage Company, a corporation, which alone had voting power then held by voting Trustees duly authorized the filing of said voluntary bankruptcy petition (R. 239-240).

On April 6, 1932, an order was entered after proceedings were had in accordance with Federal Equity Rule 29, making certain conclusions of law as follows (R. 262):

1. That the American Bond and Mortgage Company did not, because of the appointment of Equity Receivers on May 22, 1931 cease to do business on that day, and accordingly did not, on that date, cease to have a place of business in the Northern District of Illinois.
2. That the Royal Indemnity Company and said individual petitioners claiming to enjoy the status of creditors and no other status, can not raise the question as to the power or authority of the Board of Directors of the American Bond and Mortgage Company, a Maine corporation, to authorize the filing of a voluntary bankruptcy proceeding where said proceeding is filed in a court which otherwise has jurisdiction.

And in and by said order said petitioners were directed to close their proofs in support of their said petitions on or before April 21, 1932 (R. 263).

On April 21, A. D. 1932, the motion of the Royal Indemnity Company and the intervening petitioners for an extension of time in which to close their proofs was denied (R. 264).

On April 27, A. D. 1932, a report was filed by the Honorable Garfield Charles, as Special Master, setting forth that no evidence had been offered or produced in connection with said petitions and answers (R. 264-265).

On May 3, A. D. 1932, an order was entered denying the petition and supplemental petitions of the Royal Indemnity Company and the individual petitioners (R. 265-267) and the following findings made:

1. That said petitioners had failed to introduce any evidence in support of their said petitions.
2. That the time fixed by the order of court for the closing of proof on the part of said petitioners expired April 21, 1932.
3. That the points of law raised by said petitions and the answer of the bankrupt thereto had been decided adversely to said petitioners.
4. That at the time of the filing of the voluntary petition in bankruptcy by the American Bond and Mortgage Company, a corporation, and at the date of the order of adjudication in bankruptcy entered therein on September 5, 1931, the District Court of the United States, Northern District of Illinois, Eastern Division had jurisdiction to adjudicate the said American Bond and Mortgage Company, a corporation, a bankrupt and had jurisdiction of its person and property.

The questions involved.

From the statement of facts contained herein, it clearly appears that the petitioners appealed from two orders or decrees of the United States District Court for the Northern District of Illinois, Eastern Division, the first of said orders being of an interlocutory nature made after a hearing pursuant to Federal Equity Rule Number 29 and the second order being final in its nature denying the said petitions.

The said interlocutory and final orders appealed from were affirmed by the United States Circuit Court of Appeals for the Seventh Circuit.

It is, therefore, submitted that the sole and only questions involved in the proceedings before the District Court or the Circuit Court of Appeals were confined to the following two questions:

1. Whether the American Bond and Mortgage Company because of the appointment of equity receivers on May 22, 1931 ceased to have its principal place of business in the Northern District of Illinois.
2. Whether the petitioners claiming to enjoy the status of creditors and no other status, could raise the question as to the power or authority of the Board of Directors of the American Bond and Mortgage Company, a Maine corporation, to authorize the filing of a voluntary bankruptcy proceeding, where such a proceeding is filed in a court which otherwise has jurisdiction.

Neither the District Court nor the Circuit Court of Appeals of the Seventh Circuit, for the purpose of their decisions, found it necessary to pass upon or to construe Section 63 of Chapter 56 of the Revised Statutes of Maine (1930) so that in this brief we shall deal only with

the second and third points stated in the petition (R. 20-24) although we controvert the contention that a stockholders vote was required under the Maine statute.

Point I.

The decision of the Court of Appeals does not present any conflict with the decisions of other United States Courts of Appeal upon any point involved, but is in harmony with the decisions of other United States Courts of Appeal and United States District Courts on the points involved.

1-A. The power or authority of the Board of Directors to authorize the filing of a voluntary petition in bankruptcy on behalf of a corporation can not be questioned or raised by a creditor.

Ann Arbor Machine Corporation, 274 F. 24-29 (C. C. A. 6th).

In re Guanacevi Tunnel Co., 201 F. 316-318 (C. C. A. 2nd).

In re A. C. Wagy & Co., 22 F. 2d 9-11 (C. C. A 9th).

In re E. T. Russell Co., 291 F. 809 (D. C. Mass.).

In re United Grocery Co., 239 F. 1016 (D. C. Fla.).

In re Hargadine-McKittrick Dry Goods Co., 239 F. 155 (D. C. Mo.).

In re Pneumatic Tube Steam Splicer Co., 60 F. 2nd 524 (D. C. Md.).

1-B. The American Bond and Mortgage Company did not, because of the appointment of equity receivers cease to have its principal place of business in the Northern District of Illinois.

In re Guanacevi Tunnel Co., 201 F. 316-19 (C. C. A. 2d).

In re American and British Manufacturing Corporation, 300 F. 839-846 (D. C. Conn.).

In re Moench & Sons Co., 130 F. 658-686 (C. C. A. 2d).

In re E. & G. Theatre Co., 223 F. 657 (D. C. Mass.)

Also see

In re Petition of Shortridge, et al., 20 F. 2d 638-639 (C. C. A. 9th).

Struther's Furnace Co. v. *Grant,* 30 F. 2d 576-77 (C. C. A. 6th).

Counsel for petitioners cite *in re Perry Aldrich Co.,* 165 F. 249 (D. C. Mass.) as conflicting with the decision of the Circuit Court of Appeals. It is submitted that upon an examination of the facts of said case, the Court will find there is no real analogy with the facts in the present case. It is to be especially noted that the Perry Aldrich Co. had ceased to have a principal place of business in the State of Massachusetts more than four months prior to the time the equity receivers were appointed and the equity receivers had no authority to carry on the business of the Perry Aldrich Co. so that the court in Massachusetts did not have jurisdiction to adjudicate the Perry Aldrich Co. a bankrupt irrespective of the question as to whether the appointment of equity receivers amounted to a cessation of business on the part of the corporation or deprived it of its principal place of business. It is, therefore, submitted that there is no conflict between the *Perry Aldrich Co. case* and the decision of the Circuit Court of Appeals.

The case of *Commerce Trust Co.* v. *Chandler,* 295 Fed. (1st C. C. A.) 241, cited by petitioners as in conflict with the decision in the Seventh Circuit at bar was a proceeding in equity—not bankruptcy.

No creditor has a right to complain that a person surrenders his property for distribution under the bankruptcy laws—whether solvent or not. A creditor does have a right to contest claims against an insolvent estate—and that is all that is held in the *Commerce Trust case*. Counsel are in error when they contend a conflict is presented between the two Circuit Courts of Appeal.

Point II.

No important question of federal law is involved which has not been or should be settled by this Court.

Section 2(1) of the Bankruptcy Act of 1898 as amended is clear and unambiguous in its terms

> "to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdiction."

and inasmuch as the question as to whether a corporation had its principal place of business in a given District for the required length of time is an issue of fact, no judicial interpretation of said section of the Bankruptcy Act was necessary.

The only effect of the decision of the Circuit Court of Appeals is to provide for the administration of the estate of the respondent in the Northern District of Illinois.

The United States District Court of Maine on petitions to transfer the involuntary petition there pending to the District of Illinois under section 32 of the Bankruptcy Act (11 U. S. C. A. section 55) and General Order Num-

ber 6 (11 U. S. C. A. 53) held that the estate of this respondent can be administered for the greatest convenience of parties in interest in the Northern District of Illinois and has ordered the transfer of said Maine involuntary proceeding to Illinois to be consolidated with either the involuntary petition or the voluntary proceeding pending in Illinois.

In re American Bond and Mortgage Company, 58 F. 2d 379 (D. C. Maine).

For other cases emphasizing the practical importance of the location of the principal place of business of this respondent see *In re American Bond and Mortgage Company,* 50 F. 2d 441 (D. C. Maine), affirmed in 51 F. 2d 60 (C. C. A. 1).

Point III.

The decision of the Circuit Court of Appeals does not conflict with applicable decisions of this Court.

The decisions of this Court in *Price* v. *United States,* 269 U. S. 492, 502, and *United States* v. *Butterworth,* 269 U. S. 504, are not applicable. In the *Price* and *Butterworth cases* this Court held that consent receiverships where the defendant is admittedly insolvent is equivalent to a voluntary assignment of all its property within the meaning of Section 3466 United States Statutes and that the United States was entitled to priority of its claim for unpaid taxes. These decisions do not hold that the receivership would amount to a voluntary assignment for all purposes but merely that it brought the corporation within the Revenue Act so that the government was entitled to priority of payment on its claim. These two cases were companion cases to *Bramwell* v. *United States Fidelity Co.,* 269 U. S. 483, which they both cite, and in which Mr. Justice Butler said: "It is a rule of universal application that general expressions used in a court's

opinion are to be taken in connection with the case under consideration. *Cohens* v. *Virginia*, 6 Wheat 264, 399."

The case of *United States* v. *Whitridge*, 239 U. S. 144, is not in conflict with the decision of the Circuit Court of Appeals. There an excise tax had been levied on corporations for the doing of business in purely corporate capacity and the ground for the tax was the possession of the advantages of the usual corporate forms and agencies. Manifestly, a corporation is not enjoying the full advantages of such corporate forms and agencies when those agencies are displaced by a receivership. The holding there is not that the fact receivers are carrying on the corporation's business prevents the corporation having a principal place of business.

All of said cases involve corporations which were in the process of winding up their affairs while the equity receivership of this respondent is purely a conservation proceeding. (R. 39-42, 44, 45.)

As far as the record in this case is concerned, this respondent at the time of the filing of the equity proceedings (R. 35) and the appointment of receivers, and at all times thereafter was solvent and was a going concern. (R. 38.)

This Court has always recognized the distinction between equity receiverships which have for their purpose the conservation of the property of the defendant and statutory creditors' bills which have for their purpose the winding up of the affairs of insolvent corporations.

In re Michigan v. *Michigan Trust Co.*, 286 U. S. 334-346.

Point IV.

The petition for writ of certiorari should be denied.

This case is not one that should be reviewed by this Court. No question of public interest is presented. The decisions are not in conflict. The respondent is bankrupt. It was so adjudicated in the Seventh Circuit on September 5, 1931, and likewise adjudicated in the District of Maine on October 14, 1931. What petitioners really desire is to have the administration in Maine (where the company had only a paper charter) and not in Illinois where it had its place of business.

Judge Peters (D. J. Maine) has heretofore ordered the proceedings in Maine transferred to the Illinois District and aptly noted that so far as administration was concerned "probably Maine would be the last considered of all the states east of the Mississippi River." 58 Fed.(2) 379, at page 382.

Dated February 4, 1933.

Respectfully submitted,

WILLIAM E. LEAHY,
of Washington, D. C.,

A. L. SCHAPIRO,
of Chicago, Illinois,
Counsel for Respondent.

BERNARD C. SCHIFF,
of Chicago, Illinois,
Of Counsel.

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CHARLES EL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

Nos. 585 and 586.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCIS C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN AND NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY, *Respondent.*

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF RESPONDENT.

WILLIAM E. LEAHY,
EDMUND M. TOLAND,
WILLIAM J. HUGHES, JR.,
Attorneys for Respondent.

A. L. SCHAPIRO,
BERNARD C. SCHIFF,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

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OCTOBER TERM, 1932.

Nos. 585 and 586.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCIS C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN AND NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY, *Respondent.*

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF RESPONDENT.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals (R. 283) is reported in 61 F. (2d) 875. The opinion of the District Court is not reported but may be found in the Record at page 258.

QUESTIONS PRESENTED.

1. The jurisdictional question hereinafter referred to (p. 8).

2. Was the principal place of business of the Bankrupt affected by the appointment of Equity Receivers who operated the business of the Bankrupt during the greater portion of the six months next preceding the filing of the voluntary petition?

3. Are general creditors permitted to move to vacate an adjudication made in a voluntary bankruptcy proceeding where the Board of Directors and Voting Trustees holding ninety-three per cent of the outstanding capital stock of the Bankrupt Company duly authorized the filing of said voluntary petition (R. 2, 239, 240), on the ground that a Maine statute requires that for the protection of "Minority Stockholders" an annual or special stockholder's meeting must be held in case of a proposed, "sale, lease or consolidation."

STATUTES INVOLVED.

The pertinent sections of the Bankruptcy Act and Chapter 56 (Sec. 63), Rev. Stat. of Maine 1930, are printed in Appendix B and Appendix C, respectively, of the present brief.

STATEMENT.

Petitioners' brief commingles the case at bar with collateral matter. It is therefore deemed necessary to submit the following statement of the case to clarify.

On September 5, 1931, American Bond & Mortgage Company, a Maine corporation, filed a voluntary petition in bankruptcy in the District Court, Northern District of Illinois, Eastern Division, and was thereupon adjudicated bankrupt (R. 1-2). The Petition was filed pursuant to direction of its Board of Directors (R. 2), supported by the vote of voting trustees, holding ninety-three (93) per cent of

the outstanding common capital stock which alone had voting power (R. 239, 240, par. 25). A *formal* stockholders meeting was not called (R. 239) to authorize the petition. Motion for appointment of a receiver was made and continued to September 10, 1931 (R. 4). Upon adjudication due reference was made to a Referee for further proceedings under the statute (R. 4).

Thereupon, five days later, on September 10, 1931, Petitioner Royal Indemnity Company moved for leave to petition in the alternative either that the adjudication be vacated and the petition be dismissed or that pursuant to General Order No. 6, all proceedings be stayed until determination of an involuntary petition then pending in Maine (R. 6-8) (R. 27). The motion for leave to file was granted (R. 7) and Petitioner Royal Indemnity Company thereupon filed its petition (R. 9-27) as stated, and then by way of supplemental petition withdrew its prayer for a stay order under General Order No. 6 (R. 8).

Grounds of Petition to Vacate Adjudication.

The Royal Indemnity Company's petition rested upon two contentions. One of mixed law and fact that the bankrupt

> "did not have its principal place of business within the Northern District of Illinois for the greater portion of the six months next preceding" * * *

the bankruptcy petition, for the reason that for three months and ten days prior thereto the bankrupt corporation had been under control of Receivers in an equity case (R. 14).

The other contention was that the Court was without jurisdiction because a stockholders meeting had not been called to authorize the filing of the petition.

The bankrupt answered the petition (R. 235-248) traversing the above petition, insisting that its "principal place

of business" was at all times in the Northern District of Illinois; that it transacted its business in Illinois (R. 240); denying the conclusion of law that a stockholders meeting was requisite to the Court's jurisdiction and averring that

> "93% of the outstanding common capital stock, which alone had voting power, then held by the voting trustees thereof duly authorized the filing of said petition, and further that said petitioner may not complain thereof." (R. 240.)

On February 15, 1932, Petitioners other than Royal Indemnity Company appeared by the same attorneys, intervened under leave of Court and adopted the position of the Royal Indemnity Company (R. 248-253).

Thereupon, pursuant to Federal Equity Rule No. 29 the District Court heard Petitioners' contentions of law as raised by their petitions on April 6, 1932, and held as follows:

> "1. The Court concludes that as a matter of law, the American Bond and Mortgage Company did not because of the appointment of equity receivers on May 22, 1931, cease to do business on that day, and accordingly did not, on that date, cease to have a place of business in the Northern District of Illinois.
>
> 2. The Court concludes that as a matter of law, said (fols. 444 & 445) petitioners claiming to enjoy the status of creditors and no other status, cannot raise the question as to the power or authority of the board of directors of the American Bond & Mortgage Company, a Maine corporation, to authorize the filing of a voluntary bankruptcy proceeding where such a proceeding is filed in a court which otherwise has jurisdiction." (R. 262-3.)

Having so ruled the District Court then ordered the *fact issues for trial* as follows (R. 263):

> "It is further ordered that said petitions of the Royal Indemnity Company and of said intervenors

> and the said answers thereto, proceed to hearing, and that said Royal Indemnity Company and said intervenors close their proof in support of their respective petitions on or before April 21st, 1932, such hearing to be consistent with this order and with the memorandum of opinion filed by this court on March 23, 1932."

But although given opportunity to present evidence upon the controverted issues of fact, Petitioners offered no evidence whatsoever, contenting themselves with moves for delay (R. 264-265).

On May 3, 1932, an order was signed by District Judge John P. Barnes, denying the petition and supplemental petitions of the Royal Indemnity Company and the individual petitioners (R. 265-267) and the following findings made:

1. That said petitioners had failed to introduce any evidence in support of their said petitions.

2. That the time fixed by the order of Court for the closing of proof on part of said petitioners expired April 21, 1932.

3. That the points of law raised by said petitions and the answer of the Bankrupt thereto had been decided adversely to said petitioners.

4. That at the time of the filing of the voluntary petition in bankruptcy by the American Bond & Mortgage Company, a corporation, and at the date of the order of adjudication in bankruptcy entered therein on September 5, 1931, the District Court of the United States, Northern District of Illinois, Eastern Division, had jurisdiction to adjudicate the said American Bond & Mortgage Company, a corporation, and had jurisdiction of its person and property (R. 265-267).

Appeal having been taken by the petitioners from the order of April 6, 1932 (R. 262) and the final order of May 3, 1932 (R. 265), the Circuit Court of Appeals for the Seventh Circuit affirmed the decision of the District Court and in its opinion (61 F. (2d) 875) District Judge Lindley in speaking for the Court said in part:

"The adjudication upon a voluntary petition is ex parte, and creditors are given no right to contest it. They are strangers at the bar and have no voice in the hearing, for the bankruptcy law permits no defense in limine to a voluntary petition. No defense is permitted by any party unless it be by stockholders contesting the asserted power of the directors. See In re Guanacevi Tunnel Co., 201 Fed. 316 (C. C. A. 2nd); In re E. T. Russell Co., 291 Fed. 809 at 818; In re United Grocery Co., 239 Fed. 1016 at 1018; In re Hargadine-McKittrick Dry Goods Co., 239 Fed. 155 at 158."

* * * * * * * * *

"So here the principal place of business of the corporation having been within Chicago and the adjudication having been entered upon the finding that such had been the fact for the greater portion of six months preceding the filing of the petition, the Court had jurisdiction unless there is evidence otherwise. No such proof appears unless it be by way of the facts regarding the receivership.

Inasmuch as the order appointing the receiver did not deprive the corporation of all corporate powers and franchises, it follows that such powers and franchises as it did retain were in operation at the place where its principal place of business had previously been. This corporate business, as Judge Lacombe said, may have been little or none, but if the corporation had any principal place of business at all it was in Chicago."

No motion for rehearing was filed by petitioners in the Circuit Court of Appeals for the Seventh Circuit.

In the proceedings heretofore had in this case the petitioners have constantly and continuously interjected collateral matter not related to or within the issues in this case. In the brief filed by petitioners in this Court, on page 12, they state that "although not directly involved in this appeal," etc., no step has ever been taken in the involuntary proceeding in Illinois except on the hearing of petitioners' motion to dismiss, but they fail

to inform the Court that they sought and obtained a "stay" of all proceedings under General Order No. 6 until determination of the involuntary petition in Maine (R. 8, 17).

Solely for the reason of aiding the Court, we have set out in Appendix A the chronological history of the litigation of the American Bond & Mortgage Company.

The principal questions here presented on review, aside from the question of jurisdiction hereinafter mentioned (p. 8 are clear and simple. First: Did the appointment of Equity Receivers with instructions to carry on the business of the company affect or destroy the principal place of business of the Bankrupt Company; and secondly: Can a general creditor question the adjudication in voluntary bankruptcy proceeding on the theory that the Court was without jurisdiction to enter the order of adjudication because a meeting of stockholders was not called, notwithstanding the fact that the Board of Directors and Voting Trustees holding 93 per cent of the outstanding capital stock duly authorized the filing of the petition.

SUMMARY OF ARGUMENT.

1. As hereinafter set forth in connection with "Jurisdiction", page 8 of the present brief, respondent asserts that the Court below had no jurisdiction on appeal from an order denying a motion to vacate the order of adjudication and hence this Court has no jurisdiction on certiorari.

2. Under authorities cited, the appointment of Equity Receivers to carry on the business of the Bankrupt Company during the greater portion of the six months next preceding the filing of the voluntary petition does not affect or destroy the principal place of business of the Bankrupt Company.

3. It is well settled that creditors are not concerned with and have no standing in court to contest adjudication in a voluntary case where the Board of Directors authorized the filing of the voluntary petition and *a fortiori* when Vot-

ing Trustees holding 93 per cent of the outstanding capital stock of the Bankrupt Company likewise authorized the filing of the petition.

4. Section 63 of Chapter 56 of the Revised Statutes of Maine (1930), titled and captioned "Rights of Minority Stockholders", in providing that a stockholders meeting is necessary before a corporation shall sell, lease or consolidate its entire business, has no reference to the right of the directors of the company to file a voluntary petition in bankruptcy.

ARGUMENT.

Point I.—Jurisdiction.

Respondents feel it their duty to question the jurisdiction of this Court, which petitioners assert rests upon Section 240-A as amended, on the ground that the Court below had no jurisdiction on appeal and hence this Court has no jurisdiction on certiorari.

Two writs of certiorari have been granted by this Court, one bringing up the appeal from the interlocutory order of April 6, 1932 (R. 262), the other the final order of May 3, 1932 (R. 265). Both orders deny the Petition to vacate the order of adjudication of voluntary bankruptcy. The interlocutory order recites that the hearing resulting in this order took place under Equity Rule 29 for the purpose of separately hearing and disposing of the two points of law challenging the jurisdiction put forward by petitioners. The order of April 6, 1932, recites:

> "The Court having considered the said points of law raised by said allegations in said petitions of the Royal Indemnity Company and said intervenors *and in the allegations contained in the said answers thereto filed by said American Bond & Mortgage Company*", (italics ours)

overruled the contentions of petitions on their two points of law and allowed petitioners until April 21, 1932, to close their proof in support of their claims that the order of adjudication was invalid and should be vacated. Peti-

tioners applied for and argued a motion to extend the time given under the order of April 6, 1932, within which to close their proof but this motion was denied (R. 264). This of itself would seem to destroy any right of appeal from this order, as obviously petitioners could not at one and the same time proceed under an order and appeal from it.

Petitioners submitted no further proof within the prescribed period and a default therefore occurred which resulted in the final order of May 3, 1932 (R. 265), holding:

> "(2) That the time fixed by the order of this Court for the closing of proof on the part of said petitioners expired April 21, 1932.
>
> (3) That the points of law raised by said petitions *and the answer of bankrupt* thereto have been decided adversely to said petitioners." (italics ours)

The order then went on to hold that at the time of the filing of the voluntary petition the Court had jurisdiction to adjudicate respondent a bankrupt and denied the petition to vacate the order of adjudication (R. 266, 267).

It thus appears that the interlocutory order of April 6, 1932, was heard upon the *petition* of petitioners *and the answer* of respondents; that on this basis petitioners' objections were overruled and time allowed within which to prove their allegations; that no proof was forthcoming and that *on this ground* a final order dismissing their petition to vacate the order of adjudication was entered.

It is submitted, therefore, that neither order was appealable. The interlocutory order was not appealable for the reason that Section 47 of the Bankruptcy Act limits appeals to matters of law and the interlocutory order was based upon matters of mixed law and fact. The final order of May 3, 1932, is likewise not appealable as its basis is petitioners' default and failure to submit proof of their objections to the jurisdiction. The scope of appellate review under Section 47-B as amended by the Act of May 27, 1926, c. 406, sec. 9, 44 Stat. 664; 11 U. S. C. A. sec. 47, cumulative pocket part 1932, is limited to the power "to superintend and revise in matter of law" and there being no question

of law before this Court (it having merged in one of fact in the trial court when the interlocutory order merged in the final order, it follows that the Court below had no jurisdiction on appeal and this Court has none on certiorari.

In addition it should be remembered that petitioners' appeal below was not from the order of adjudication *but from the order denying petitioners' motion to vacate the order of adjudication* (R. 262, 265, 272). The judgment of adjudication being presumptively correct (Chicago Bank of Commerce v. Carter, 61 F. (2d) 986, 988, and cases cited), the motion to vacate was addressed to the discretion of the Court wherein the Court would be compelled to weigh the strength of the showing in favor of vacating its order already entered as against the presumption in favor of the validity of that order. Petitioners' motion is, therefore, analogous to a motion for a new trial, a motion to reinstate a cause already dismissed, or a motion to set aside a judgment, all of which upon denial give no right of appeal.

Further, it should be remembered that the ground of petitioners' motion was that the principal place of business of the company was not within the jurisdiction of the trial court upon the theory that Equity Receivers having been appointed more than three months prior to the filing of the petition the company ceased to do business on the date of their appointment. However, under the decisions the question of the locus of the principal place of business is always one of *fact*. The claim that the appointment of Equity Receivers destroyed the principal place of business in Illinois *as a matter of law* is a misuse of words. Whether after the appointment of the Equity Receivers the company *could* have a place of business in Illinois was a legal question preliminary to the further inquiry: *Did* the company then have a place of business in Illinois? Ultimately, therefore, the question before the Court was one of fact, in the decision of which petitioners' "question of law" was only one of a number of matters to be weighed in considering whether petitioners' motion overcame the presumption of

correctness of the judgment of adjudication already entered. This is indicated by the fact that the order of April 6, 1932, denying petitioners' contentions of law, ordered petitioners to close their proof on or before April 21, 1932 (R. 262, 263). When petitioners failed to adduce any testimony, the Court, having nothing before it to overcome its previous finding embodied in its order of adjudication, on May 3, 1932, entered a final order denying their motion to vacate (R. 265-267).

The appeal herein does not come within the exception contained in Section 47-B (by reference to Section 48), allowing the appellate court on an appeal *from a judgment of adjudication* to consider both matters of law and of fact.

The other ground of the motion preserved on appeal by petitioners, *i. e.*, that no stockholders meeting was called, seems non-jurisdictional in character, as hereinafter shown, and was no ground for vacating the order of adjudication.

In *Chicago Bank of Commerce v. Carter*, 61 F. (2d) 986, (C. C. A. 8th), the Court held that an order denying a motion to vacate an adjudication was appealable. While agreeing with that Court on other questions decided in its opinion, counsel herein submit, with deference, that the Court's reasoning with respect to the appealability of an order denying a motion to vacate is inconclusive.

POINT II.

A CORPORATION DOES NOT CEASE TO HAVE A PRINCIPAL PLACE OF BUSINESS WITHIN THE MEANING OF THE BANKRUPTCY ACT WHEN IT GOES INTO AN EQUITY RECEIVERSHIP.

Petitioners claim that upon the qualification of the equity receivers and the entry of an order enjoining the corporation from interference with them, the corporation ceased to have its principal place of business in the Northern District of Illinois. This argument assumes (1) that the alleged error is jurisdictional and can be raised by a creditor

after adjudication; (2) that the Bankruptcy Act requires the transaction of business instead of a mere *place* of business; (3) that the business transacted by the equity receivers in preserving the property and carrying on the corporation's work was not the business of the corporation but the business of the Court, the Judge, or the receivers.

As to these contentions, it should be remembered that the principal place of business involves a question of fact. Facts must be alleged and proved and a determination made upon them. Such determination in the form of the adjudication can not be attacked collaterally.

> *Noble v. Union River Logging Co.*, 147 U. S. 165, 173-4.
>
> *Roszell Bros. v. Continental Coal Corp.*, 235 Fed. 343, 345-346, affd. 242 Fed. 243.

This Court has held that an adjudication can not be attacked collaterally on the ground that the principal place of business was not in the district of adjudication.

> *Fairbanks Steam Shovel Co. v. Wills*, 240 U. S. 642, 649.

See also,

> *Cajiafas v. U. S.*, 38 F. (2d) 3, 4. (C. C. A. 6.)

As the Court said in *Roszell Bros. v. Continental Coal Corp.*, above cited:

> "Clearly it has no relation to the court's jurisdiction of the subject matter of the proceeding. That court had jurisdiction of a proceeding in bankruptcy, and such was the character of the proceeding. * * * It is simply a preliminary fact necessary to be alleged and proved to authorize the court to act."

The petition here having alleged that the principal place of business was within the jurisdiction of the Court, and the adjudication having so found it, the burden was upon

petitioners to prove facts inconsistent with respondent's claim. The only thing pointed to by petitioners is the contention put forward as a matter of law that the appointment of the Equity Receivers entirely destroyed the principal place of business of respondent.

As to the allegation of the principal place of business and the burden of proof upon one attacking it see:

In re Guanacevi Tunnel Co., 201 Fed. 316 (C. C. A. 2).
In re Lone Star Ship Bldg. Co., 6 F. (2d) 192, 195 (C. C. A. 2).
In re Biermeister Bros. Co., 208 Fed. 945, 948-9 (D. C.).
Lawrence v. Atl. P. & P. Corp., 298 Fed. 246, 248 (C. C. A. 5).

There is nothing in the Bankruptcy Act to indicate that the transaction of business is necessary to the *existence* of a principal place of business.

This question was squarely presented and decided in *In re American and British Mfg. Corp.*, 300 Fed. 839-846, wherein the Court held that the fact that receivers had been appointed and a corporation's assets sold and converted into cash did not result in the corporation losing the locus of its principal place of business. The Court said:

> "To hold as the petitioner claims would be to rule that, once a receiver is appointed, the business then loses its character, and not only is operated under Court direction but that a debtor could not receive the benefits of the Bankruptcy Act, at least while the receivers were in charge." (R. 864.)

The common sense intention of Congress in using the words "principal place of business" was obviously to allow the petition to be filed where the principal assets of the company were located and naturally this would be in the district wherein the corporation had been carrying on its business prior to the Equity Receivership and wherein the

Equity Receivers continued to carry it on after their appointment.

To the same effect as *In re American & British Mfg. Corp., supra,* are

In re Guanacevi Tunnel Co., 201 Fed. 316.
In re Tiffany v. La Plume Condensed Milk Co., 141 Fed. 444.
In re C. Moench & Sons Co., 130 Fed. 685.
In re E. & G. Theatre Co., 223 Fed. 657.

In the most recent case decided in the United States Courts, in which an attempt to set aside an order of adjudication upon a voluntary petition was made, raising exactly the same points as raised in this case, Mr. Justice Gardner speaking for the Circuit Court of Appeals for the Eighth Circuit said (Chicago Bank of Commerce v. Carter, 61 F. (2d) 986, at page 987):

> "The jurisdiction of the bankruptcy court must depend upon the existence as a fact of the residence, domicile, or principal place of business of the person to be adjudged bankrupt within the district of the court for the period of time required by statute. In considering the question of the court's jurisdiction, we may exclude any question of domicile or residence of these corporations because, confessedly, neither of them had a domicile or residence in the state of Arkansas, all being as to that state foreign corporations. If the court's jurisdiction is to be sustained, it must be upon the ground that these corporations had their principal places of business in the state of Arkansas for six months, or the greater portion thereof, immediately preceding the filing of the petitions.
>
> It was alleged in the petitions to vacate the order of adjudication that they had not had such principal places of business within the territorial jurisdiction of the bankruptcy court. The appellees joined issue on this allegation, and the trial court, after hearing the testimony, found as to the Central Texas Ice Company as follows: 'Testimony of witnesses was taken orally

at the bar of the court and the cause was argued and the court having heard and fully considered all of said facts and pleas, and arguments, and being fully advised in the premises is of the opinion that the principal place of business of said Central Texas Ice Company was within the jurisdiction of this court for a period of six months immediately preceding the date of its said adjudication, and being of the opinion that the application and amended application should be overruled and dismissed.'

A substantially identical finding was entered as to each corporation.

Every presumption is indulged in favor of the jurisdiction of the court once assumed, and there is, of course, a presumption in favor of the correctness of the finding of the lower court. As said by this court in Central Republic Bank & Trust Co. v. Caldwell, et al., 58 F. (2d) 721, 734: 'The rule in this court often announced is: "Where the court below has considered a question and made a finding on conflicting evidence, its conclusion is presumptively correct, and it should not be disturbed unless it is reasonably clear that a serious mistake has been made in the consideration of the facts or an obvious error has intervened in the application of the law." Dodge v. Norlin (C. C. A.) 133 F. 363, 371; Cleage v. Laidley, 149 F. 346, 353 (C. C. A. 8); Houchin Sales Co. v. Angert, 11 F. (2d) 115, 117 (C. C. A. 8), and cases cited; Parrish v. City Nat. Bank, 32 F. (2d) 982 (C. C. A. 8); Remington on Bankruptcy (3d Ed.) sec. 3871; see Quinn v. Union Nat. Bank, 32 F. (2d) 762 (C. C. A. 8).'

To the same effect see Coder v. Arts (C. C. A.), 152 F. 943, 15 L. R. A. (N. S.), 372, affirmed 213 U. S. 223, 29 S. Ct. 436, 53 L. Ed. 772, 16 Ann. Cas. 1008; Moore v. Yampa Mercantile Co. (C. C. A.), 287 F. 629; In re Cannon (C. C. A.), 31 F. (2d) 388.

The question as to the place of business of a corporation is one of fact. Home Powder Co. v. Geis (C. C. A.), 204 F. 568, 572; In re Pusey & Jones Co. (C. C. A.), 286 F. 88; Continental Coal Corp. v. Roszelle Bros. (C. C. A.), 242 F. 243; Dryden v. Ranger Refining & Pipe Line Co. (C. C. A.), 280 F. 257, 262; In re Pennsylvania Consol. Coal Co. (D. C.) 163 F. 579.

This court in Home Powder Co. v. Geis, supra, referring to the place of business of a corporation, said: 'It thus becomes a question of fact as to whether the mining company had its principal place of business in the Western district of Missouri for the greater portion of the six months next preceding August 27, 1910.'

In Dryden v. Ranger Refining & Pipe Line Co., supra, the court said: 'Where a corporation conducts its business at a number of places, no one of which is plainly the place where its business is principally conducted, one of such places, where a substantial business is transacted, and from which general supervision of all of its business is exercised, may be properly held to be the principal place of business of such corporation.'

In the course of the opinion in the above case, the court quoted with approval from In re Worcester Footwear Co. (D. C.), 251 F. 760, 761, as follows: 'It is not easy, nor is it required, to lay down any general rule for determining which one of several places at which a corporation does business is its principal place of business.'

The principal place of business of a corporation is to be determined by the facts, and not by the intentions of the parties, nor the recitals in the charter of the corporation. The principal place of business of a corporation for the purpose of jurisdiction in bankruptcy being a question of fact, neither its place of incorporation nor its charter is controlling. In re Pennsylvania Consol. Coal Co., supra."

The principal cases cited by petitioners were:

In re Perry Aldrich Co., 165 Fed. 249 (D. C. Mass.).
In re McNally Co., 208 Fed. 291.

In the *Perry Aldrich* case the corporation had no place of business in Massachusetts for more than four months except a room occupied, used and paid for by another concern. The receivership was in another state, and the receivers had no authority to carry on the business of the corporation nor did they ever undertake to carry it on. These facts seem to afford a sufficient ground for decision

to differentiate this case from the present. It is noticeable, too, that the *Perry Aldrich* case was cited but not followed in two subsequent cases, *In re Monarch Oil Co.*, 272 Fed. 524, and *In re E. & G. Theatre Co.*, 223 Fed. 657, both of which latter cases were cited and reviewed in *In re American & British Mfg. Corp., supra.*

In *In re McNally Co.*, 208 Fed. 291 (D. C. S. D. N. Y.), cited by petitioners, the Court found that a Pennsylvania corporation which had filed a certificate changing its address to New York, to carry on the business of which receivers were appointed in 1909, subsequent to which date it had then no business in New York, did not have its principle place of business in New York, for the purpose of a petition in bankruptcy filed in 1912. A reading of the opinion shows that the finding of fact by the Court relative to its cessation of doing business in New York was the basis of the decision.

In re Plotke, 104 Fed. 964, did not involve a corporation at all and was an involuntary case.

The argument of petitioners that when Equity Receivers are appointed the business passes out of the hands of the bankrupt so that there no longer exists "his principal place of business" seems over-ingenuous and would result in the destruction of the corporate entity. The true view would seem to be that the corporation carries on its business through the medium of receivers. Thus, suppose the corporation becomes solvent and the receivers are discharged. Does a *new* business come into existence? If not the old business must have continued through the instrumentality of the receivers. Only in this way can the facilities afforded by the Bankruptcy Act for the liquidation of assets where they principally exist be utilized. The argument would result, too, in the case of a true foreign corporation, which had gone into an Equity Receivership, that no bankruptcy petition at all could be filed in this country.

By the appointment of Equity Receivers the legal existence of a corporation is not cut short. The existence of such corporation is not suspended. It is still the corporate entity that it was before. It is clothed with the same franchises and its corporate powers continue to exist subject in their exercise, of course, to the order of the Court appointing the Receivers. Under such circumstances the corporation can and may generally do all things necessary to preserve its legal existence notwithstanding the appointment of the Receiver to which the temporary management of the corporation property is given. Otherwise, the appointment of a Receiver would be tantamount to a dissolution of the corporation.

Petitioners' restriction of the word "business" in Sec. 2 (1) of the Bankruptcy Act to "active and personal engagement in a commercial pursuit" has no foundation in the Act itself. A corporation is none the less carrying on business within the meaning of the Act when, for the protection of itself and its creditors, it utilizes the processes of United States Courts. Equity receivers are appointed not to destroy but to preserve a business. This Court can take judicial notice that there is a constant close contact between receivers of a corporation and the corporation itself and its officers in the ordinary Equity Receivership. Not all Equity Receiverships lead to bankruptcy; the corporation has the power at all times upon a proper showing to move for the discharge of the receivers; in many cases it does so and this activity, coupled with its continuation as a corporate entity and its utilization of the processes of the Courts is a sufficient doing of "business" within the meaning of the Bankruptcy Act.

As to petitioners' contention that the activities of the Equity Receivers are their own or the Court's but not the company's, this Court has squarely held in *Michigan v. Michigan Trust Co., Receivers*, 286 U. S. 334, 76 Law. Ed. 684, that an Equity Receiver continuing the operation of the

corporate business is using the company's corporate franchise and that through the Court that receiver acts as the company. To the same effect is

Central Trust Co. v. N. Y. C. & N. R. Co., 110 N. Y. 250, 18 N. E. 92.
N. Y. Terminal R. R. Co. v. Gaus, 204 N. Y. 512, 98 N. E. 11.
Armstrong v. Emmerson, 300 Ill. 54, 62.
People v. Hopkins, 18 F. (2d) 731, 733.
In re Detroit Properties Corp., 254 Mich. 523, 236 N. W. 850.

There being no allegation in petitioners' motion to vacate to the effect that the Equity Receivership did not, between May 22, 1931, and September 5, 1931, transact any business of the corporation as the order of May 22, 1931, authorized and directed them to do ~~(R. 94-96)~~ it must be presumed that they did transact business and this is the fact.

United States v. Whitridge, 231 U. S. 141, 148, cited by petitioners, is not in conflict, the only question involved being whether an excise tax for the doing of business in a purely corporate capacity applied to a corporation in receivership. Likewise, *Price v. United States*, 269 U. S. 492, 502, and *United States v. Butterworth*, 269 U. S. 504, cited by petitioners, seem inapplicable, the question involved in those cases being the priority of debts due the United States within the meaning of R. S. Sec. 3466. These two cases were companion cases to *Bramwell v. United States Fidelity Co.*, 269 U. S. 483, wherein Mr. Justice Butler remarked:

> "It is a rule of universal application that general expression used in a court's opinion are to be taken in connection with the case under consideration."

The expressions in the *Price* and *Butterworth* cases are to be taken in connection with the question as to the priority of debts due the United States.

POINT III.

THE POWER OF THE BOARD OF DIRECTORS TO FILE A VOLUNTARY PETITION CAN NOT BE QUESTIONED BY A CREDITOR SINCE NO JURISDICTIONAL QUESTION IS INVOLVED.

It should be remembered that the action of the Board of Directors in the present case was duly authorized by Voting Trustees holding 93 per cent of the stockholders (R. 239-240). Petitioners, however, contend that a formal stockholders' meeting should have been called. The District Court held that however the Maine law was construed, if the Board of Directors should authorize the filing of a voluntary bankruptcy proceeding "and such proceeding is filed in a court which otherwise has jurisdiction, it is exceedingly difficult to see what concern it is of a creditor whether that proceeding has been formally authorized by stockholders" (R. 261).

The Circuit Court of Appeals in approving the action of the District Court said:

> "The adjudication upon a voluntary petition is ex parte, and creditors are given no right to contest it. They are strangers at the bar and have no right in the hearing, for the Bankruptcy Law permits no defense in limine to a voluntary petition" (R. 284).

If this be the law it is obvious that only a *jurisdictional defect* can be brought to the attention of the Bankruptcy Court by a creditor. It seems clear that the alleged absence of the authorization of the stockholders is not a jurisdictional defect. Certainly the Court had jurisdiction of the *subject matter*. The petitioners' claim, therefore, narrows itself down to the assertion that the Court did not have jurisdiction of the *person*.

It is difficult to see how the action of the Corporation in submitting its case to the Court, having its attorneys appear on its behalf and invoking the exercise of the Court's

powers did not give the Court jurisdiction of the *person.* Certainly a judgment in such a case would bind a corporation personally.

Leman v. Kreutler Arnold Co., 284 U. S. 448, 451, which is conclusive.
15 C. J. 798.
1 Freeman on Judgments, 5th ed. p. 684.
Schroeder v. Merchants & Mechanics Ins. Co., 104 Ill. 71, 75.
U. P. R. Co. v. U. S., 2 Wyo. 170, writ of error dismissed, 105 U. S. 262.

As an indication that the alleged error was not jurisdictional in a true sense is the fact that where a petition is filed without a stockholders' authorization the defect later on may be waived by delay or acquiescence of a stockholder.

In re Farmers Supply Co., ~~255~~ 273 Fed. 824, 826 (C. C. A. 5).
Dodge v. Kenwood Ice Co., 204 Fed. 577, 579 (C. C. A. 8).

If the action of the corporation were utterly void obviously no waiver could render it valid.

The authorities are conclusive that creditors can not raise the question of the alleged defect.

In re A. C. Wagy & Co., Inc., 22 F. (2d) 9 (C. C. A. 9).
In re Guanacevi Tunnel Co., 201 Fed. 316-318 (C. C. A. 2).
In re Ann Arbor Machine Corp., 274 Fed. 24, 28-29 (C. C. A. 6).
In re United Grocery Co., 239 Fed. 1016, 1018 (D. C. Fla.).
In re E. T. Russell Co., 291 Fed. 809, 818 (D. C. Mass.).
In re Pneumatic Steam Splicer Co., 60 F. (2d) 524, 525 (D. C. Md.)

In the case of *Chicago Bank of Commerce, supra,* Mr. Justice Gardner, speaking for the Circuit Court of Appeals, 8th Circuit, said:

> "At the threshold of this controversy, we are met with the objection that the appellants, being creditors, could not maintain petitions to vacate the adjudication in bankruptcy on a voluntary petition. As a general rule, a general creditor has no such standing in a bankruptcy court as to entitle him to move to vacate an adjudication made in a voluntary proceeding. In re A. C. Wagy & Co. (C. C. A.), 22 F. (2d) 9, 11; In re Ann Arbor Mach. Corp. (C. C. A.), 274 F. 24; In re Ives (C. C. A.), 113 F. 911."
>
> "The appellants, as creditors, were not concerned with the regularity of the proceedings of the board of directors. A majority of the board of directors of each company was in attendance when the action was taken authorizing the filing of petitions in voluntary bankruptcy. A majority of the board had authority to pass such a resolution, binding upon the whole board and upon the corporation.
>
> In In re Guanacevi Tunnel Co., *supra,* a creditor contended that an adjudication in bankruptcy was filed without authority. In the course of the opinion the court said: 'The petitioner contends that the voluntary petition was filed without authority, because he alleges that the corporation is solvent (in the sense of the Bankrupt Law), and because only the majority of shareholders can, by the laws of Arizona, dissolve a corporation prior to the time fixed in the articles of incorporation. We will examine this contention, although we think it is one which a creditor has no standing to make in the case of a voluntary petition. * * * The voluntary petition for adjudication as bankrupt is tantamount to such proceedings. The petition charges that the corporation is unable to meet its current obligations, which is commercial insolvency. The Bankruptcy Act itself permits any person who owes debts to file a petition to be adjudicated. "Any qualified person may file a petition to be adjudged a voluntary bankrupt." Section 59a.'

> Neither the nonparticipating directors, nor any one purporting to represent the corporations, or either of them, objected to the action of the directors, and the irregularity was not such as could be taken advantage of by the appellants as creditors. At the time the action was taken, substantially all the stock of all the corporations was represented in the person of the directors present and participating, and we conclude that the bankruptcy court acquired jurisdiction to enter orders of adjudication."

As shown in Point 4 p. 24 hereof, a final indication that the error is not jurisdictional is the fact that the Maine statute applies only to the *transfer* of the corporation's assets and this is effected not by filing the petition but by the adjudication. Filing the petition is in no way forbidden by the Maine statute. See the statute verbatim Appendix C herein. See also

In re Kenwood Ice Co., 189 Fed. 525, 528, Affd. 204 Fed. 577 (C. C. A. 8).
In re DeCamp Glass Casket Co., 272 Fed. 558, 565 (C. C. A. 6), *cert. den.* 256 U. S. 703.
Fitts v. Custer Slide Min. & Devel. Co., 266 Fed. 864, 868 (C. C. A. 8).

The right to go into bankruptcy being absolute, at the option of the bankrupt, the remark of a leading text writer that only an objection *going to the jurisdiction* can be raised by creditors seems absolutely sound.

1 Remington on Bankruptcy, Sec. 512½, 1931 supplement.
In re A. C. Wagy & Co. Inc., supra.

The answer of petitioners to the cases above cited is the claim that so far as Maine is concerned the matter is disposed of by the decision of the Maine Court in *Rollins v. Clay*, 33 Me. 132, the suit in trepass referred to in the present brief. It is asserted that this case announces the public policy of the State which is alleged to be controlling. It

seems to respondent that the question at issue being what is a jurisdictional defect under the Bankruptcy Act the policy of the State of Maine relative to defects in land titles or otherwise is not germane to the discussion of a matter of purely Federal law.

Commerce Trust Co. v. Chandler, 295 Fed. 241, cited by petitioners involved an equity proceeding, not bankruptcy. The case simply held that a creditor had the right to contest claims against an insolvent estate.

Westerlund v. Black Bear Min. Co., 203 Fed. 599 (C. C. A. 8), cited by petitioners is in favor of respondent in holding that only stockholders could complain of non-compliance with a statute prohibiting an incumbrance without the approving vote of the stockholders.

POINT FOUR.

CHAP. 56, SEC. 63, REV. STAT. OF MAINE 1930, DOES NOT REQUIRE A STOCKHOLDERS' MEETING PRIOR TO VOLUNTARY BANKRUPTCY.

It is stoutly maintained in Petitioners' brief that in spite of the agreement of Voting Trustees holding 93 per cent of Respondent's outstanding common voting stock (R. 239-240), the failure of the company to wait until an annual stockholders' meeting before filing the voluntary petition or to call a special meeting for this purpose, renders the filing of the voluntary petition null and void and compels the bankruptcy court to vacate its adjudication of Respondent as a bankrupt.

This somewhat extraordinary conclusion is claimed to follow from a Maine statute quoted below (Petitioners omit the Title and Caption; see statute fully quoted Appendix C.):

> "RIGHTS OF MINORITY STOCKHOLDERS. Sec. 63. Corporation Not to Sell Franchise or Entire Property without Consent of Stockholders. R. S. c. 51, sec. 60, 1929, c. 242."

"Corporation not to sell franchises or entire property without consent of stockholders, R. S., c. 51, s. 60, 1929, c. 242. No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation. All such sales, leases and consolidations shall be subject to the provisions of this and the eleven following sections, and to the prior lien of stockholders as therein defined. Except as to franchises, this and the eleven following sections shall not be held to apply to mortgages or corporate property."

The plain purpose of the Statute, as the Title & Caption indicates, is the protection of minority stockholders in case of "sale, lease or consolidation" of a corporation's entire property. As minority stockholders have a substantial protection in the fact that a solvent corporation infrequently or never goes into voluntary bankruptcy, it is difficult to believe that the Maine legislature in 1891, twenty years before corporations had the right to file voluntary bankruptcy proceedings (the right was first conferred by the Bankruptcy Act of 1910; See *In re Jefferson Casket Co.*, 182 F. 689 (D. C. N. Y. 1910), intended, under a statute headed "Rights of Minority Stockholders" to require an annual meeting, or a special meeting, of the stockholders as a pre-requisite to taking the emergency step of voluntary bankruptcy. So fantastic does the idea appear that only the clearest words should be construed to convey such a meaning.

The clear words are not in the Statute. A voluntary petition in bankruptcy is not "selling" or "leasing" or "consolidating" a corporation's franchise or its entire property. The only words in the Statute remotely appli-

cable to a voluntary petition in bankruptcy is the statement that "No corporation * * * shall in any manner *part with* its franchise or its entire property." Petitioners claim that a voluntary petition in bankruptcy constitutes "parting with" the company's property in violation of the Act.

It is sufficient answer to state that it is not the *filing* of the Petition which could constitute in any case "parting with" the property in a voluntary bankruptcy but the *adjudication.* The adjudication is the act of the Court, not of the company. In terms therefore the Statute does not prohibit the company from filing the Petition. It will no doubt be conceded that the Statute does not prohibit a *Federal Court* from achieving, by an adjudication of bankruptcy, the conveyance of a corporation's property. Nor does the statute denounce an "attempt", assuming that filing the Petition is an "attempt" to part with property.

As above stated, filing a voluntary petition is not selling or leasing or consolidating. These words throw light on the phrase "part with." It is noticeable that the phrase "part with" is not repeated at the end of the paragraph wherein, after the requirement for a stockholders' meeting, the statute provides that the call for the meeting "shall give notice of the proposed *sale, lease or consolidation.*" There is no reference here to "parting with" the company's property, which indicates that the dominant thought in the legislative mind was protection of minority stockholders in case of a "sale, lease or consolidation."

Any possible contention that Section 63 applies to voluntary bankruptcy seems removed by the provisions of the second sentence to the effect that:

> "All such sales, leases and consolidations shall be subject to the provisions of this and the eleven following sections, and to the prior lien of stockholders as therein defined."

This sentence restricts the first sentence in Section 63 to "sales, leases and consolidations", none of which include

voluntary bankruptcy. It makes nonsense to contend that a voluntary bankruptcy is subject to the provisions of Section 63 and the eleven following sections of the Act. (See entire statute Appendix C.) Obviously, there is no such thing as a "prior lien of stockholders" when a company is bankrupt.

No authorities need be cited to the effect that state statutes should not be construed to invade the field of Federal law. From the viewpoint of convenience there seems no reason why a state legislature should consider that a stockholders meeting, annual or special, should be necessary before a corporation chartered by it could go into bankruptcy. On the contrary, every reason flowing from convenience, protection of the stockholders as well as the creditors, points to the necessity on many occasions for a corporation to go into bankruptcy overnight in order that its assets may not be dissipated and to protect its creditors to the limit. Indeed, it may be questioned whether a state statute so construed as to hamper a corporation in taking advantage of the Federal Bankruptcy Act would be constitutional. This Court can take judicial notice of the fact that corporations operate frequently in states far distant from the state of their creation and that their stockholders in many cases run into the thousands. Construing the Maine statute as contended for by petitioners hamstrings the right of a corporation speedily and conveniently to take advantage of the Federal Bankruptcy Act in that it requires a corporation to leave its principal place of business, many times far distant from the state of its charter, go to the state of its charter, call a meeting of the stockholders in that state and then return to its principal place of business in order to file its petition in bankruptcy. Whatever the technical rights conferred as to the *place* wherein a corporation may enter bankruptcy, it was certainly the plain intention of the Bankruptcy Act that the usual place for a voluntary petition in bankruptcy should be the principal place of business of the corporation.

Turning to the decisions cited by petitioners in support of their contention that the Maine statute includes voluntary petitions in bankruptcy, respondents herein find none of the cases so cited on pages 16-18 of petitioners' brief in point.

The first case cited, *In re Standard Shipyard Co.*, 262 Fed. 522 (D. C. Maine), involved an *involuntary* proceeding, the question at issue being whether a letter written by the clerk of a corporation by authority of its directors *prior to the filing of involuntary petition* stating the inability of the corporation to pay its debts and suggesting involuntary proceedings in bankruptcy was such an unqualified admission as to constitute an act of bankruptcy. It seems clear that this question has nothing whatever to do with the present case. A reading of the decision shows that the basis of the decision was the ordinary rule of law that deputizing in advance an officer of a corporation to admit bankruptcy *provided a petition should be filed* is not an act of bankruptcy.

Having so held, the Court then in effect states not only it was not an act of bankruptcy but if it were an act of bankruptcy under the Maine statute a meeting of the stockholders would be necessary. It should be observed that this latter holding is (1) dictum, the case having already been decided on another ground; (2) it was a decision of a *Federal District Court* (not a decision of the highest court of the state), handed down January 8, 1920, prior to the enactment of the amendment to Section 63, Chapter 56, in 1929. Further, the basis of the decision is by a parity of reasoning drawn from *In Re Bates Machine Co.*, 91 Fed. 625, wherein a Massachusetts statute enacted prior to 1899, in no way similar to the present Maine statute, was construed by a Federal Court. As the Massachusetts statute was enacted long prior to the Bankruptcy Act of 1910, permitting for the first time a corporation to file a voluntary petition it seems to evidence no application to the present question.

Further ground of distinction in the *Standard Shipyard Case, supra,* is the fact that the alleged lack of proof of an act of bankruptcy and the other questions in the case were raised not by creditors but by the Court itself, which dismissed the petition.

In Re Bates Machine Co., 91 Fed. 625 (D. C. Maine) decided January 28, 1899, was a decision made prior to the Bankruptcy Act of 1910, and the present question was not before the Court.

In *Re Quartz Gold Mining Co.,* 157 Fed. 243 (D. C. Ore. 1907) is likewise a decision rendered prior to the amendment of the Bankruptcy Act in 1910. The case simply holds that under an Oregon statute restricting the right to dissolve a corporation to the stockholders a corporation cannot commit an act of bankruptcy by resolution of its directors admitting its inability to pay and its willingness to be adjudged a bankrupt. The question of the lack of the power in the directors was not raised by a creditor and this point was not before the Court.

Van Emon v. Veal, 158 Fed. 1022 (C. C. A. 9th Circuit, 1908) is simply a memorandum opinion affirming without reasons the case above cited.

In Re Burbank Co., 168 Fed. 719 (D. C. N. H. 1909) was prior to the amendment of the Bankruptcy Act of 1910 and simply follows without opinion *In Re Bates Machine Co., supra, In Re Quartz Gold Mining Co., supra,* and *Van Emon v. Veal, supra.*

In Re Crystal Ice Co., 283 Fed. 1007 (D. C. Mont. 1922) was likewise an involuntary proceeding wherein the chief question involved was whether an act of bankruptcy had in effect been committed. After holding that it had not been committed, the Court went on by way of dictum to say it could not have been committed.

In Re Security Association, 52 F. (2d) 961 (D. C. Nev. 1931) was likewise an involuntary proceeding wherein the alleged bankrupt itself made a motion to dismiss on the

ground, among other grounds, that the approval of the stockholders was necessary to the action of the directors. A creditor raised the point and the case simply followed the cases last referred to.

The case of *Rollins v. Clay*, 33 Maine 132, cited in the brief of petitioners on page 17, was decided in 1851. The statute in question first appeared in the jurisdiction in Maine as Chapter 84 of the Public Laws 1891, and the statement that this decision was rendered in favor of one who was not a stockholder, establishing as the law of Maine corporation that the right to raise this objection was not confined to stockholders, is not applicable to the point involved. Actually the case of *Rollins v. Clay* was an action of trespass, *quare clausum*, and the question of common law power of directors to alienate land arose in connection with the question of title to the property. That case is no authority whatever for the legal proposition that creditors of a corporation can attack what purports to be corporate conveyance merely on the grounds that some minority stockholder or stockholders were not consulted.

An analysis of the above cases cited by petitioners in favor of their construction of the Maine statute shows no construction whatever by the highest court of the State of Maine or by any Maine court at all. The only actual construction of the Maine statute was in *In Re Standard Shipyard Co., supra*, the decision in an *involuntary* case being by a United States District Court. There is nothing in the decision to the effect that the Maine statute deprived directors of their right to file a voluntary petition in bankruptcy on behalf of the corporation. The statement by counsel for petitioners that the *Standard Shipyard Co. Case, supra*, was to this effect is entirely erroneous. The further statement,

> "That such is the law of Maine has not been disputed either by the District Court or by the Circuit Court of Appeals in this case"

is likewise erroneous. Respondent's view of the Maine statute was briefed and argued in both the District Court and the Circuit Court of Appeals. This is shown by the opinion of the District Court (R. 261). While not considered by the Circuit Court of Appeals in its opinion the point was raised before that court in respondent's briefs.

It is submitted that there being no authoritative interpretation of the Maine statute by the highest court of the State and the subject matter of the statute being in the general field of the Federal law as involving the right of a corporation to take advantage of the Federal Bankruptcy Act with respect to voluntary proceedings in bankruptcy, it is open to this Court to construe the Maine statute as this Court sees fit. The decision of the District Court in *In Re Standard Shipyard Co., supra,* is not binding upon this Court. The orderly administration of the Bankruptcy Act, the rule in favor of its liberal construction in order that the Act may be utilized to its fullest possible extent, the evident intention of the Act that it may be resorted to by corporations as well as individuals upon short notice, lead to the belief that no state statute should be interpreted to obstruct these several aims unless absolutely necessary. Certainly in the present case the Maine statute does not in so many words apply to bankruptcy; as already outlined, it is only by strenuous "interpretation" that it can be made to include voluntary bankruptcy. At the time of its enactment there was no such thing as the voluntary bankruptcy of a corporation, the right to which was only conferred by the amendments to the Bankruptcy Act of 1910. The caption of the Maine Act, its general scope revealed by reading Sections 63-74, all having to do with consolidation, merger, stock values, etc., shows that the Act was intended only to protect minority stockholders in the particular situations expressly covered.

It is a well settled principle that directors of a corporation have the power to place the corporation in bank-

ruptcy by voluntary petition without submitting the matter to a vote of the stockholders even though the state statute requires a stockholders meeting for purposes of dissolution.

In re Lone Star Shipbuilding Co., 6 F. (2d) 192.
In re United Grocery Co. (D. C.), 239 Fed. 1016.
In re E. T. Russell Co. (D. C.), 291 Fed. 809.
Chicago Bank of Commerce v. Carter, 61 Fed. (2d) 986 and cases cited.

In the case of *In re Pneumatic Tube Steam Splicer Co.* (D. C.), 60 F. (2d) 524, wherein the petitioners moved to set aside the order of adjudication on grounds similar as urged in this case, District Judge Coleman said:

> "It is a well settled principle that a creditor may not challenge the right of a corporation's board of directors to file a petition in bankruptcy on behalf of the company."

The Court further held that a state statute requiring consent of two-thirds of stockholders to dissolution of a corporation does not affect the directors' right to place corporation in bankruptcy by their vote alone.

The filing of a petition in bankruptcy by a corporation was held not an "incumbrance" of its property, within the meaning of Rev. St. Colo. 1908, sec. 865, as amended by Laws Colo. 1915, p. 175, providing that the directors of a mining corporation shall not have power to incumber its mines or plant without a vote of the stockholders authorizing it. *Fitts v. Custer Slide Mining & Development Co.* (C. C. A. Colo. 1920), 266 F. 864.

Corporation laws of Delaware, providing that the business of every corporation shall be managed by a board of directors, and, forbidding the directors to dissolve a corporation, except with the consent of two-thirds of the stockholders, do not restrict the authority of the directors to authorize the filing of a petition in voluntary bankruptcy on behalf of the corporation, since a corporation is

not dissolved by bankruptcy proceedings, unless the state statute so provides. *In re DeCamp Glass Casket Co.* (C. C. A. Tenn. 1921), 272 F. 558; certiorari denied *Hamilton v. DeCamp Glass Casket Co.* (1921), 256 U. S. 703, 41 S. Ct. 624, 65 L. Ed. 1179.

Petitioners' contentions that the Maine statute required a meeting of the stockholders prior to the filing of the voluntary petition, and most of the cases cited by petitioners in support thereof, were brought to the attention of the United States District Court for Maine in another branch of the present litigation, *In re American Bond & Mortgage Co.*, 58 F. (2d) 379. The Court declined to hold that the Maine statute required the meeting of the stockholders and with reference to the principal place of business stated:

> "It can hardly be doubted in this case that the bankrupt had its principal place of business in Chicago for six months or more prior to the filing of the involuntary petition there (page 382)."

CONCLUSION.

Respondent believes the Court below had no jurisdiction on appeal and this Court has none on certiorari. If the Court believes otherwise it seems clear upon reason and the authorities:

(1) That the principal place of this business was in Illinois and that it was not destroyed by the appointment of Equity Receivers.

(2) That the Bankruptcy Act was intended to cover exactly such a situation as is involved in the present case and to permit through the medium of a voluntary petition and adjudication the liquidation of assets where they are principally located.

3. The failure to call a stockholders meeting was not a jurisdictional defect capable of being urged by a creditor, particularly when the directors duly authorized the filing of the voluntary petition and voting trustees holding 93 per

cent of the outstanding capital stock agreed that the petition should be filed.

4. The Maine statute cited relative to the necessity of a stockholders meeting was not intended and does not cover the filing of a voluntary petition in bankruptcy by the corporation.

The judgment below should be affirmed.

Respectfully submitted,

WILLIAM E. LEAHY,
EDMUND M. TOLAND,
WILLIAM J. HUGHES, JR.,
Attorneys for American Bond & Mortgage Company, Bankrupt.

A. L. SCHAPIRO,
BERNARD C. SCHIFF,
Of Counsel.

APPENDIX A.

Chronological Statement of American Bond & Mortgage Company Corporate Litigation.

On May 21, 1931, a bill was filed for the appointment of Receivers in Equity for American Bond & Mortgage Company in the United States District Court, Northern District of Illinois, Eastern Division (Rec. 35). The bill alleged solvency but present distress (Rec. 38).

According to the Clerk's file mark an involuntary petition in bankruptcy was filed in the same court at the same time (Rec. 217).

The next day the company appeared in the Equity suit, consented to the appointment of Receivers, and Receivers were thereupon appointed (Rec. 47-51).

The Company answered the involuntary petition denying insolvency or acts of bankruptcy (Rec. 206).

Four (4) days later (May 25, 1931) present counsel for Royal Indemnity Company et al. filed an involuntary petition in bankruptcy against the company in the United States District Court, District of Maine. The company filed its answer in that court, denying insolvency and acts of bankruptcy (Rec. 130) and motion was made by the company to transfer the cause to the United States District Court, Northern District of Illinois, Eastern Division (Rec. 132). This motion was opposed (Rec. 135-161).

Thereupon counsel for Royal Indemnity Company et al. appeared in the United States District Court, Northern District of Illinois and moved:

First: To dismiss the involuntary petition in bankruptcy for alleged defects therein.

Second: To stay all proceedings therein under General Order No. 6 until determination of the involuntary petition in Maine (Rec. 8, also 17).

The Illinois District Court denied the motion to dismiss the involuntary petition but allowed appellants' motion to

"stay" all proceedings until the hearing in the Maine District Court (Rec. 17).

On September 5, 1931, American Bond and Mortgage Company withdrew its answers to the involuntary petitions in Illinois and Maine (thus ceasing to contest adjudication) and also filed its voluntary petition in the Illinois District Court (which is the case now under review here) and upon which adjudication was then had.

On September 10, 1931, Appellants petitioned the Illinois District Court to vacate the order of adjudication upon the voluntary petition and "stay" all proceedings awaiting action in Maine under General Order No. 6.

On April 6, 1932, pursuant to Equity Rule 29 the District Court heard petitioners' contentions of law as raised by their petitions and held that the principal place of business of the bankrupt company was in the Northern District of Illinois for the greater part of six months next preceding the filing of the petition; and secondly, that the petitioners being creditors could not raise the question as to the power or the authority of the Board of Directors to authorize the filing of a voluntary bankruptcy proceeding where a proceeding is filed in a court which otherwise has jurisdiction (R. 262, 263). The Court further ordered that said petitions of said interveners and the said answers thereto proceed to hearing and that said proof in support of their respective petitions be presented on or before April 21, 1932.

The petitioners defaulted and offered no evidence whatsoever and on May 3, 1932, an order was signed by District Judge Barnes denying the petition and supplemental petitions of the Royal Indemnity Company and the individual petitioners (R. 265, 267) and made the following finding: That the petitioners failed to introduce any evidence; that the points of law raised by the petitions and the answer of the bankrupt had been decided adversely to petitioners, and at the time of the filing of the petition the District Court of the United States, Northern District of Illinois,

had jurisdiction to adjudicate the American Bond & Mortgage Company a bankrupt. Appeal was taken by the petitioners from the order of April 6, 1932 (R. 262) and the final order of May 3, 1932 (R. 265).

In March, 1932, a hearing was had in the Maine District Court before Judge Peters to determine (in strict compliance with General Order No. 6) whether the administration should be had in Maine where the company had a charter only or in Illinois where it had its principal place of business for many years. The hearing resulted in an order by the Maine District Court that the interests of all concerned required the administration to be had in Illinois. See *In re American Bond & Mortgage Company*, 58 Fed. (2d) 379.

Counsel then appealed from the *order of transfer* to the First Circuit Court of Appeals where that phase of the case is now under advisement.

Following the order of transfer entered in Maine the Seventh Circuit Court of Appeals upheld the adjudication in the voluntary case.

The involuntary case in the Illinois District is pending, has not been abandoned, but is "stayed" upon Appellants' motion under General Order No. 6, awaiting final determination in the First Circuit of Judge Peters' order of transfer.

APPENDIX B.

"*Title 11, U. S. C. Section 11. Courts; jurisdiction and powers.* * * * (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdictions."

"*Title 11, U. S. C. Section 47, 1932 Cumulative Annual Pocket Part. Same; appellate jurisdiction.* * * * (b) The several circuit courts of appeal and the Court of Appeals of the District of Columbia shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law (and in matter of law and fact the matters specified in section 48 of this title) the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised by appeal and in the form and manner of an appeal, except in the cases mentioned in said section 48 of this title to be allowed in the discretion of the appellate court. (As amended May 27, 1926, c. 406, sec. 9, 44 Stat. 664.)"

"*Title 11, U. S. C. Section 48, 1932 Cumulative Annual Pocket Part. Appeals.* (a) Appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit courts of appeal of the United States and the Court of Appeals of the District of Columbia and to the supreme courts of the Territories in the following cases, to wit: (1) From a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) From a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of $500 or over. Such appeal shall be taken within thirty days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be. * * * (As amended May 27, 1926, c. 406, sec. 10, 44 Stat. 665.)"

APPENDIX C.

Rights of Minority Stockholders.

Sec. 63. Corporation not to sell franchises or entire property without consent of stockholders. R. S. c. 51, sec. 60. 1929, c. 242.

No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation. All such sales, leases and consolidations shall be subject to the provisions of this and the eleven following sections, and to the prior lien of stockholders as therein defined. Except as to franchises, this and the eleven following sections shall not be held to apply to mortgages or corporation property.

To effect a consolidation under the provisions of the foregoing paragraph and subject to the provisions of this and the eleven following sections, any two or more corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state, or any corporation or corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state and any corporation or corporations organized under the laws of any other state, may consolidate into a single corporation which may be either one of said corporations, provided the same be a corporation originally organized under the laws of this state, or a new corporation under the laws of this state to be formed by means of such consolidation, by entering into an agreement duly authorized by a majority of the directors of the respective corporations and signed by the duly authorized officers, and under the respective seals of said corporations, prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, whether or not the consolidated corporation shall be one of the constitutent corporations or a new corporation created by such consolidation, and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set out in the certificate of organization of corporations organized under this chapter and as are pertinent in the case of a consoli-

dation, the manner of converting the capital stock of each of such consolidating corporations into the stock or obligations of such consolidated corporation together with such other provisions and details as shall be deemed necessary to perfect the consolidation. Said agreement shall be acknowledged by one of the executing officers of each of the consolidating corporations before an officer authorized by the laws of this state to take acknowledgments of deeds, to be the respective act, deed and agreement of each of said corporations.

Subject to provisions of by-laws with reference to closing stock-books prior to stockholders' meetings, said consolidation agreement shall be submitted to the stockholders of record of each corporation at a meeting thereof called separately for the purpose of taking the same into consideration, and at said meeting a vote in person or by proxy shall be taken for the adoption or rejection of said agreement, and if the votes of stockholders of each corporation representing a majority of the voting power, on a proposal to consolidate said corporation with another, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the clerk or secretary of each corporation and the agreement so signed, acknowledged, adopted and certified, after it has been examined by the attorney-general, and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws of this state, shall be recorded in the registry of deeds in the county where the said consolidated corporation is located, and within sixty days after the day of the meeting at which said consolidation agreement is adopted by the stockholders, a copy thereof certified by such register shall be filed in the office of the secretary of state, who shall enter the date of filing thereon, and on the original agreement, certified as aforesaid, to be kept by the consolidated corporation, and shall record said copy. From the time of filing the copy of such agreement in the office of the secretary of state, said agreement shall be taken and deemed to be the agreement and act of consolidation of the said corporations and said original consolidation agreement or a certified copy thereof shall be evidence of the existence of such consolidated corporation and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation. When said agreement is

so signed, acknowledged, adopted, recorded and filed, the separate existence of all of the constituent corporations, or all of such constituent corporations except the one into which such constituent corporations shall have been consoliated, shall cease, and the constituent corporations, whether consolidated into a new corporation or merged into one of such constituent corporations, as the case may be, shall become the consolidated corporation by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities, restrictions and duties of each of such corporations so consolidated and all and singular the rights, privileges, powers, franchises and immunities of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constitutent corporations on whatever account, and all other things in action of or belonging to each of said corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason thereof; provided, that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilties and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

The notice herein provided for shall be given to all stockholders of record of all of the consolidating corporations, whether or not entitled to vote, but subject to any by-law provisions with reference to closing stock-books prior to stockholders' meetings. If the holder of record of any share not entitled to vote in any constituent corporation selling, leasing, consolidating, or otherwise disposing of its prop-

erty as aforesaid, shall at or prior to the taking of the vote, dissent therefrom in writing and shall at such time, or within one month from the date of such vote, file his written dissent therefrom with the president, clerk or treasurer of such corporation, then such non-voting shares of such stockholder shall be subject to and be entitled to all of the rights granted by the eleven following sections in like manner as if they had been voting shares.

If the location of the consolidated corporation is not the same as that of the constituent corporations, then the clerk of the consolidated corporation shall within sixty days after such consolidation has become effective file a certificate of the consolidation, setting forth the names and locations of the consolidated and constituent corporations, in the registry of deeds of each county, other than that of the consolidated corporation, where the constituent corporations may be located.

The provisions of this section with reference to consolidation shall neither restrict nor enlarge the provisions of section one of chapter sixty-eight and section forty-four of chapter sixty-two as now amended.

Sec. 64. Remedy of dissenting stockholder. R. S. c. 51, sec. 61. If any stockholder in any corporation which shall vote to sell, lease, consolidate, or in any manner part with its franchises, or its entire property, or any of its property, corporate rights, or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, shall vote in the negative and shall file his written dissent therefrom with the president, clerk, or treasurer of such corporation within one month from the day of such vote the corporation in which he is a stockholder may within one month after such dissent is so filed, enter a petition with the supreme judicial court, or the superior court, sitting in equity, in the county where it held its last annual meeting, in term time or in vacation, setting forth in substance the material facts of the transaction, the action of the corporation thereon, the names and residences of all dissenting stockholders whose dissents were so filed, making such dissenting stockholders parties thereto, and praying that the value of the shares of such dissenting stockholders may be determined, and for other appropriate relief.

Sec. 65. If corporation fails to enter petition, dissenting stockholder may enter and prosecute the same. R. S. c. 51, sec. 62. If any such corporation shall fail to enter such petition as aforesaid, any stockholder dissenting as aforesaid may within one month thereafter enter such petition and prosecute the same, making such corporation party defendant. In either case the court shall fix the time of hearing and shall order notice thereof to all parties interested, by publication in some newspaper or newspapers at least two weeks successively, and such personal service as is required upon bills in equity.

Sec. 66. Court to determine value of shares and secure rights of stockholders; corporation to deposit amount of award in some bank; shares to become property of corporation. R. S. c. 51, sec. 63. The court, or any justice thereof in term time or in vacation, shall hear the parties and determine as soon as practicable the value of the stock of such dissenting stockholders; and shall make and enforce all such orders and decrees as may be necesary to secure to such stockholders all their rights. Such corporation shall, notwithstanding any appeal as hereinafter authorized, forthwith deposit the amount so awarded, in some bank or trust company designated by the court, to be by it held until final judgment, and paid to the parties as thereafterwards ordered by the court directing such deposit. Upon such deposit and upon compliance with final judgment as hereinafter provided, the shares of such stockholders shall become the property of such corporation, and the court may make and enforce such orders as may be necessary to secure its title thereto.

Sec. 67. Either party may enter appeal, and trial had before a jury; award, how paid; appellant to have lien on property of corporation. R. S. c. 51, sec. 64. Within thirty days after filing the decree determining such values, as aforesaid, either party may enter an appeal therefrom, to be heard at the next term of the superior court in the county where such petition is pending. The issue may thereupon, at the request of any party thereto, be submitted to a jury. If upon such trial the amount of such award is increased, the stockholder shall have judgment and execution against the petitioning corporation or corporation defending, for

such increase with interest and costs; and if decreased, such corporation may withdraw from said deposit, the amount of the decrease with interest and costs. During the pendency of such appeal, the appellant shall have a lien upon all the property of the corporation interested in such sale or lease, or consolidation for thirty days after judgment on appeal. Such lien shall have precedence over any mortgages or leases made after any vote of sale, lease or consolidation. All such liens may be released upon filing with the court, a bond in such amount and with such sureties as the court may approve. Two or more stockholders may join in the same appeal.

Sec. 68. If dissent is not filed, stockholder to be deemed to have assented; guardian may be appointed for incapacitated stockholder. R. S. c. 51, sec. 65. Any stockholder failing to file his dissent as required in section sixty-four shall be deemed to have assented to such vote. If it appears that any stockholder is legally incapacitated from giving such assent or waiver, the court shall appoint suitable guardians or representatives for such persons, and the case shall then be heard and determined as if such stockholders had filed their dissent as required by section sixty-four. Provided, however, that, if the proceedings hereby authorized are not had, then as against any stockholder who is a minor, or otherwise legally incapacitated, and who has no guardian, the period of one month in which to file the written dissents aforesaid shall not begin to run until the removal of the incapacity, by the appointment of a guardian or otherwise and actual notice of the vote of sale, lease or consolidation.

Sec. 69. Stockholders to deposit in court certificates of shares; transfers to be subject to final decree. R. S. c. 51, sec. 66. Every stockholder appearing in answer to, or filing any petition, by himself, guardian, or other legal representative, shall simultaneously therewith or within such time as the court may allow, deposit in court his certificate of shares duly indorsed to the corporation of which he is a shareholder, or some other sufficient transfer thereof, which shall there remain subject to the order of the court. All attachments and transfers of such shares shall be subject to the final decrees in such proceeding; and any such attach-

ing creditor or transferee shall be allowed to become a party to the proceedings to protect his interests; and if such person, so claiming under such transfer or attachment omits or fails to intervene in such proceedings, his omission as a party shall not bar or impair the proceedings.

Sec. 70. If corporation fails to pay amount decreed, rights of stockholder; lien of dissenting stockholder. R. S. c. 51, sec. 67. If none of the corporations interested in such petition shall pay or deposit the amount as herein ascertained and decreed, with interest thereon, within such time as the court shall order, any stockholder, entitled to such amount, may at his option take judgment and execution therefor, with interest and costs, against such corporation or withdraw his stock aforesaid; and after such withdrawal or if said execution is returned unsatisfied within thirty days after judgment, the owner of such shares shall retain all the rights of a dissenting stockholder as though no proceedings had taken place. All stockholders entitled to a remedy hereunder, shall have a lien upon the property of the corporations in which they are stockholders which shall take precedence of all mortgages or leases, of any kind made after any vote of sale, lease or consolidation. Such liens may be released as provided in section sixty-seven.

Sec. 71. Court may hear and determine petitions, and make orders for enforcement of rights of all parties. R. S. c. 51, sec. 68. The supreme judicial court, or the superior court, or any justice thereof, may in term time or vacation hear and determine said petitions, and make all orders for giving notice to non-resident parties, and taking action with reference to them, for the enforcement of the rights of any party to the proceedings, for the consolidation of two or more petitions, for the payment of interest on the adjudged value of the shares, for the payment of dividends, pending the proceedings, for interest upon the deposit aforesaid, for the distribution of costs between the parties and for enforcing its orders and decrees, as are consistent with the principles of equity practice, and as the convenient and speedy settlement of the controversy may require.

Sec. 72. If petition fails for any matter of form, new petition may be filed. R. S. c. 51, sec. 69. If any petition shall fail for any matter of form, any party interested therein may file a new petition within two months thereafter. No petition shall be abated by the death of any party, but may thereupon be summarily revived by suggestion and amendment.

Sec. 73. Exceptions. R. S. c. 51, sec. 70. The proceedings hereby authorized shall not apply to nor affect any special act relating to the rights of minority stockholders in any particular corporations enacted before the fourth day of April, eighteen hundred ninety-one, nor any mortgage legally made.

Sec. 74. Proceedings for valuing stock under the laws of other states to be a bar to any under this chapter. R. S. c. 51, sec. 71. If either of the corporations interested has consolidated its stock with corporations created by any other state or states, or the stock therein is held by virtue of concurrent legislation of one or more states, and proceedings have been commenced for valuing the stock and paying the value thereof in any state having jurisdiction, such proceedings shall, while pending, be a bar to any under this chapter; but if such proceedings in any other state shall fail for any reason not touching the merits, a petition may be filed as herein provided within two months thereafter.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 585.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, ET AL., *Petitioners*,

vs.

AMERICAN BOND & MORTGAGE COMPANY, *Respondent*, (Appellee below)

No. 586.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, ET AL., *Petitioners*,

vs.

AMERICAN BOND & MORTGAGE COMPANY, *Respondent*, (Appellee below)

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER TO PETITION FOR INJUNCTION.

WILLIAM E. LEAHY,
EDMUND M. TOLAND,
WILLIAM J. HUGHES, JR.,
Attorneys for American Bond & Mortgage Company, Bankrupt.

KIRKLAND, FLEMING, GREEN and MARTIN,
DEFREES, BUCKINGHAM, JONES and HOFFMAN,
Attorneys for Chicago Title & Trust Company and Arthur W. Draper, Receivers of American Bond & Mortgage Company.

A. L. SHAPIRO,
BERNARD C. SCHIFF,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

Nos. 585 and 586.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCIS C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN AND NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY, *Respondent,*
(Appellee below)

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER TO PETITION FOR INJUNCTION.

Now come American Bond and Mortgage Company, Bankrupt, by William E. Leahy, Edmund M. Toland and William J. Hughes, Jr., its attorneys, and Chicago Title and Trust Company and Arthur W. Draper, Receivers of American Bond and Mortgage Company, by Kirkland, Fleming, Green and Martin and Defrees, Buckingham, Jones and Hoffman, their attorneys, and in response to the Petition for Injunction filed herein by Royal Indemnity Com-

pany, *et al.*, on March 9, 1933, respectfully show to the Court in opposition thereto, that:

1. Although American Bond and Mortgage Company was adjudicated Bankrupt in the United States District Court, Northern District of Illinois, Eastern Division, on September 5, 1931, and in the United States District Court, District of Maine, on October 14, 1931, still no progress in administration has been had because of the tactics of petitioners. There is no Trustee and no Receiver in Bankruptcy. The properties still remain in the hands of respondent Receivers appointed in an Equity case *prior* to adjudication of bankruptcy.

2. On September 5, 1931, the Equity Receivers reported to the United States District Court, Northern District of Illinois, Eastern Division, that their examination into the affairs of the company had convinced them that the company was bankrupt and should be administered in the bankruptcy court. But as yet, through no fault of theirs, they have not been relieved of their responsibility to protect and preserve the company's assets. They are anxious to turn the assets over to the bankruptcy court.

3. It appears from the receivers' petition annexed as Exhibit "A" to the petition for injunction herein that the asset "President Monroe Building, New York City" may be lost to the Estate by foreclosure unless reorganization is effected. The receivers could not stand idle and allow the Estate's equity to be wiped out by foreclosure. Accordingly, they presented the dilemma to the Chancellor and prayed for an order in the alternative after giving notice to all parties. Bankruptcy receivers or trustees could protect the Estate, whereas, equity receivers are more or less powerless in view of bankruptcy adjudication.

Petitioners opposed the Receivers' petition for protection of the "President Monroe" asset (see Exhibit "A" to the Petition for Injunction filed herein). They were given five days to answer the petition in the District Court. In-

stead of answering, they moved in this Court for an injunction as in an original proceeding. At the same time they stated, Petition, page 8:

> "19. That the Equity Receivers are threatening to proceed with their said application though the same has been temporarily adjourned."

Their own statement negatives any fancied right to an injunction. No harm could come if the District Court did appoint Receivers in Bankruptcy to protect the asset.

Something must be done. What else could the Equity Receivers do but call the Court's attention to the need of protection? We submit the application for an injunction here is without color of merit and should be denied.

The petition for *injunction* is not fair. The reason the involuntary petition mentioned in paragraph 6, page 6, of the petition for injunction has not been brought to trial is because petitioners themselves secured a "stay order" under General Order No. 6 awaiting decision of the District Court of Maine as to whether or not it would transfer the case there to Illinois for administration. Since the adjudications in bankruptcy the Receivers have held the properties, protecting and conserving them, awaiting the appointment of some one to whom they could deliver the estate for distribution.

Petitioners are not altogether frank with Court or counsel. We refer to paragraph 10 of the petition. The reason the meeting was not held was because of petitioners' motion to vacate the adjudication and dismiss the petition and subsequent appeal from the adverse order. The same observation is true as to paragraph 13 of the petition. The petitioners themselves secured a "stay" of the involuntary petition upon their own motion under General Order No. 6 and may not now argue that because nothing thereafter was done therein (the stay order being obeyed) the petition was "abandoned". We refer the Court to the opin-

ion of Judge Peters of the Maine District Court where the same ledgerdemain was attempted. See *In re American Bond & Mortgage Company*, 58 F. (2d) 379, at page 383, where Judge Peters said:

> "The language of counsel is well adapted to the facts in the Acme Harvester Case, but is not an apt characterization of the situation disclosed in Chicago. The District Court there, instead of denying adjudication, 'practically' or otherwise, on September 5, 1931, denied the motion, made by the objecting creditors here, to dismiss the petition, and ordered further proceedings stayed until hearing could be held in this district, the domicile of the bankrupt, on petition filed here. The record, instead of showing an intention to abandon the proceedings, shows an intention on the part of the court to preserve the status quo until the first hearing could be had in the court of domicile as required by General Order VI and until a determination of the question of transfer. The record does not permit a finding that the Chicago proceedings referred to have been abandoned. On the contrary, I hold, as I would be obliged to find and hold, to order a transfer, that there is a pending petition in the Eastern Division of the District Court for the Northern District of Illinois to which the case pending in Maine can be transferred."

The petitioners could move in the District Court for a restraining order if they conceived a right thereto. But that they did not do. They ask this Court to sit as a trial Court—not to exercise appellate jurisdiction.

The present application for an injunction is typical of the moves resorted to by petitioners since September 5, 1931, that have interfered with the proper and orderly administration of this bankrupt's estate. For history of

this litigation we refer the Court to the statement thereof printed as an appendix to this answer.

Respondents respectfully submit that the prayer of the petitioners should be denied.

Respectfully submitted,

WILLIAM E. LEAHY,
EDMUND M. TOLAND,
WILLIAM J. HUGHES, JR.,
Attorneys for American Bond & Mortgage Company, Bankrupt.

KIRKLAND, FLEMING, GREEN and MARTIN,
DEFREES, BUCKINGHAM, JONES and HOFFMAN,
Attorneys for Chicago Title & Trust Company and Arthur W. Draper, Receivers of American Bond & Mortgage Company.

A. L. SHAPIRO,
BERNARD C. SCHIFF,
Of Counsel.

District of Columbia, ss:

EDMUND M. TOLAND, being duly sworn on oath deposes and says that he is one of the attorneys for the respondent American Bond & Mortgage Company. That the foregoing answer is true to the best knowledge, information and belief of deponent. Deponent further says that he is a member of the Bar of the District of Columbia residing in the City of Washington, District of Columbia, and the reason why this verification is made by deponent and not by respondents is that said respondents are not within the City of Washington, District of Columbia, where deponent has his office.

EDMUND M. TOLAND.

Subscribed and sworn to before me this 13th day of March, 1933.

LEILA M. HODGES,
(Seal) *Notary Public, D. C.*

My commission expires September 17, 1934.

APPENDIX.

Chronological Statement of American Bond & Mortgage Company Corporate Litigation.

On May 21, 1931, a bill was filed for the appointment of Receivers in Equity for American Bond & Mortgage Company in the United States District Court, Northern District of Illinois, Eastern Division (Rec. 35). The bill alleged solvency but present distress (Rec. 38).

According to the Clerk's file mark an involuntary petition in bankruptcy was filed in the same court at the same time (Rec. 217).

The next day the company appeared in the Equity suit, consented to the appointment of Receivers, and Receivers were thereupon appointed (Rec. 47-51).

The Company answered the involuntary petition denying insolvency or acts of bankruptcy (Rec. 206).

Four (4) days later (May 25, 1931) present counsel for Royal Indemnity Company et al. filed an involuntary petition in bankruptcy against the company in the United States District Court, District of Maine. The company filed its answer in that court, denying insolvency and acts of bankruptcy (Rec. 130) and motion was made by the company to transfer the cause to the United States District Court, Northern District of Illinois, Eastern Division (Rec. 132). This motion was opposed (Rec. 135-161).

Thereupon counsel for Royal Indemnity Company et al. appeared in the United States District Court, Northern District of Illinois and moved:

First: To dismiss the involuntary petition in bankruptcy for alleged defects therein.

Second: To stay all proceedings therein under General Order No. 6 until determination of the involuntary petition in Maine (Rec. 8, also 17).

The Illinois District Court denied the motion to dismiss the involuntary petition but allowed appellants' motion to

"stay" all proceedings until the hearing in the Maine District Court (Rec. 17).

On September 5, 1931, American Bond and Mortgage Company withdrew its answers to the involuntary petitions in Illinois and Maine (thus ceasing to contest adjudication) and also filed its voluntary petition in the Illinois District Court (which is the case now under review here) and upon which adjudication was then had.

On September 10, 1931, Appellants petitioned the Illinois District Court to vacate the order of adjudication upon the voluntary petition and "stay" all proceedings awaiting action in Maine under General Order No. 6.

Then in March, 1932, a hearing was had in the Maine District Court before Judge Peters to determine (in strict compliance with General Order No. 6) whether the administration should be had in Maine where the company had a charter only or in Illinois where it had its principal place of business for many years. The hearing resulted in an order by the Maine District Court that the interests of all concerned required the administration to be had in Illinois. See *In re American Bond & Mortgage Company,* 58 Fed. (2d) 379.

Counsel then appealed from the *order of transfer* to the First Circuit Court of Appeals where that phase of the case is now under advisement.

Following the order of transfer entered in Maine the Seventh Circuit Court of Appeals upheld the adjudication in the voluntary case.

The involuntary case in the Illinois District is pending, has not been abandoned, but is "stayed" upon Appellants' motion under General Order No. 6, awaiting final determination in the First Circuit of Judge Peters' order of transfer.

SUPREME COURT OF THE UNITED STATES.

Nos. 585 and 586.—October Term, 1932.

Royal Indemnity Company, et al., Petitioners, *vs.* American Bond & Mortgage Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 10, 1933.]

Mr. Justice Roberts delivered the opinion of the Court.

These cases present two questions:

Has the location where a corporation maintained its main office and transacted most of its business ceased to be the principal place of business for the purposes of jurisdiction in bankruptcy if, during the greater portion of six months preceding the filing of the petition, the company's assets and affairs were in custody and control of equity receivers?

Have creditors standing to ask the vacation of an adjudication based on a petition filed by authority of the directors of the bankrupt, where a statute of the state of incorporation forbids transfer, except in the usual course of business, of the franchises or assets of the company, without stockholders' assent?

The relevant facts may be briefly stated.

The respondent, a Maine corporation, had its principal place of business in Chicago, Illinois. May 21, 1931, unsecured creditors brought suit against it in the United States District Court for Northern Illinois, averring solvency and existing difficulty in meeting pressing obligations, and praying the appointment of receivers. On the same day other creditors filed a petition in bankruptcy in the same court. The company appeared in the equity suit and consented to the granting of the prayer of the bill. Receivers were appointed, took possession of the assets and proceeded to administer them. An answer to the petition in bankruptcy denied insolvency or acts of bankruptcy. May 25, 1931, the Royal

Indemnity Company and others filed a petition in bankruptcy against the respondent in the United States Court for the District of Maine. Answer was made denying insolvency and the commission of the alleged acts of bankruptcy. The company sought to transfer the cause to the court in Illinois, which the petitioners opposed. Thereafter the petitioners moved in the Illinois bankruptcy proceeding to dismiss the petition for alleged defects, and to stay all proceedings under General Order No. 6, pending hearing upon the involuntary petition in Maine. The court denied the motion to dismiss, but granted a stay effective until hearing in the Maine district. September 5, 1931, the respondent withdrew its answers in the Illinois and Maine bankruptcy cases, thus abandoning its contest of adjudication in both. On the same day it filed a voluntary petition in the Illinois District Court and adjudication was immediately entered.

September 10, 1931, the petitioners prayed the Illinois court to vacate the adjudication and for a stay pending action in Maine. The motion to vacate raised the questions of law we have stated. The court set the cause down under Equity Rule 29 for disposition of these questions. By order entered April 6, 1932, it decided them adversely to the petitioners. The respondent having filed an answer denying certain of the averments of the petition, the court directed that the cause be set for hearing so that the petitioners, if they desired, might offer proof. No evidence was offered and in default thereof the court held a hearing on the petition and answer, and on May 3, 1932 made a final order refusing to vacate the adjudication. Separate appeals were allowed from both orders, and the Circuit Court of Appeals affirmed them. The case is here on certiorari.

First. The Bankruptcy Act invests each district court, as a court of bankruptcy, with jurisdiction to "adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile" within the court's territorial jurisdiction, "for the preceding six months, or the greater portion thereof".[1] For three months and ten days of the six months preceding the filing of the respondent's voluntary petition its affairs had been in the control of receivers having the usual powers of management. The decree appointing them included an injunction restraining the cor-

[1] U. S. C., Tit. 11, § 11. The word "persons" as used in this section includes corporations. U. S. C., Tit. 11, § 1 (19).

poration, its officers and agents, from interfering with, transferring, selling, or disposing of the property, assets or income of the respondent, or taking possession or attempting to sell or dispose of any part of the same. The result, say the petitioners, is that the corporation thereupon ceased to have a principal place of business in the Northern District of Illinois. The claim is that the Bankruptcy Act refers to the place where the bankrupt is doing business, and not to a place where a business the company once owned is being conducted by someone else; that the business is not a separate entity or essence irrespective of the identity of the person conducting it. The business is said to have passed out of the hands of the respondent and to have been taken over in such sense that the company ceased to be in the business theretofore conducted at its former place of business, even though the business itself, as such, was continued by the receivers.

The argument ignores the practical purpose of the statute as applied to such a situation. The decree in equity and its execution by officers of the court did not change the ownership of the assets or of the business. The corporation continued to have the only business owned before the appointment of receivers, though the actual conduct of its operations was for the time being vested in the court's appointees. Its corporate existence and functions as a corporation continued. Whether its affairs were in the course of winding up or were being managed in the hope of restoration of full control to the corporate agencies is immaterial. Until a winding up had been effected the business formerly conducted by the company in Chicago continued to be the respondent's business and not that of another, and the place where that business was conducted, whether by receivers or by the corporate officers, still remained the "principal place of business", in the common acceptation of the phrase. In these days of corporate activity it is not unusual for a company chartered in one of the states to conduct most, if not all its business in another state far removed from that of incorporation. Considerations of convenience no doubt prompted the Congress to permit the initiation of a bankruptcy in the state where the business is in fact transacted rather than that of the domicile, where often none is done. Unnecessary inconvenience and expense may be inflicted upon creditors if they are required to participate in a proceeding conducted hundreds or thousands of miles from the situs of the bankrupt's activities,

where the books and records are usually kept. That Congress was mindful of this is evident from the provisions for transfer of a cause by one court of bankruptcy to another where a proceeding is pending against the same bankrupt, for the greater convenience of the parties in interest.[2] We should therefore construe the language of the act so as to effectuate the evident purpose of the legislation, and not so narrowly as to defeat the true intent of Congress. We hold that the District Court for the Northern District of Illinois, in respect of respondent's principal place of business, had jurisdiction to entertain the petition.[3]

Second. The Revised Statutes of Maine, Chap. 56, under the caption "Rights of Minority Stockholders", enact:

"Sec. 63. Corporation not to sell franchises or entire property without consent of stockholders. No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation. All such sales, leases and consolidations shall be subject to the provisions of this and the eleven following sections, and to the prior lien of stockholders as therein defined."

After providing that the act shall not apply to mortgages of corporate property, the sections following regulate methods of effecting consolidations, the valuation and payment for the stock of dissenting minority shareholders, etc. We are told that this statute prohibits the filing of a voluntary petition in bankruptcy by authority of a resolution of the board of directors, and that a shareholders' vote is required to authorize such action. No case decided by the Maine courts is cited in support of this assertion. But it is said that the filing of such a petition is a conveyance of all of the corporate property, and so plainly within the statu-

[2]The respondent petitioned the Maine District Court to transfer the proceeding there initiated to the Illinois District Court, as authorized by U. S. Code, Tit. 11, §§ 11 (19) and 55. An order for such transfer was made (58 F. 2d) 379), for the reason that administration in Illinois would be more convenient to the parties in interest.

[3]Compare *In re C. Moench & Sons Co.*, 130 Fed. 685; *Tiffany* v. *La Plume Condensed Milk Co.*, 141 Fed. 444; *In re Monarch Oil Corp.*, 272 Fed. 524; *In re American & British Mfg. Co.*, 300 Fed. 839. *Contra*, *In re Perry Aldrich Co.*, 165 Fed. 249; *In re McNally Co.*, 208 Fed. 291.

tory prohibition. We cannot agree. The petition in a voluntary or involuntary proceeding is a pleading. The entry of an adjudication vests title in the trustee, and this is the act of the court, not of the petitioner. Moreover, it seems too plain to need elaboration that the statute does not in terms affect the initiation of a bankruptcy proceeding, and was passed for a wholly different purpose.

We might rest our decision as to the second question upon this ground. But there is another equally persuasive. Statutes such as the one relied on are intended for the protection of stockholders and have nothing to do with the interests or rights of creditors. Even if action of directors authorizing the filing of a voluntary petition, or admitting inability of the corporation to pay its debts and its willingness on that ground to be adjudged a bankrupt, thus creating an act of bankruptcy under Section 21 of the Act,[4] were in excess of the authority conferred, or otherwise invalid, creditors could not for that reason attack the consequent adjudication.[5] The question is purely one of the internal management of the corporation. Creditors have no standing to plead statutory requirements not intended for their protection. If the stockholders' rights had been infringed, and they chose to waive them, a creditor could not assert them in opposing an adjudication.

The judgments are affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[4]U. S. C., Tit. 11, § 21 (5).

[5]See *In re Guanacevi Tunnel Co.*, 201 Fed. 316; *In re United Grocery Co.*, 239 Fed. 1016; *In re Ann Arbor Mach. Corp.*, 274 Fed. 24; *In re E. T. Russell Co.*, 291 Fed. 809; *In re A. C. Wagy Co., Inc.*, 22 F. (2d) 9; *In re Pneumatic T. S. Co.*, 60 F. (2d) 524; *Chicago Bank of Commerce* v. *Carter*, 61 F. (2d) 986. *Contra, In re Bates Machine Co.*, 91 Fed. 625; *Home Powder Co.* v. *Geis*, 204 Fed. 568; *In re Russell Wheel & Foundry Co.*, 222 Fed. 569; *In re Standard Shipyard Co.*, 262 Fed. 522.